

Realising Fair and Just Working Conditions for Migrant Workers in Europe

Closing the Rights Protection and Justice Gaps:
The Role of the Revised Action Plan on the
European Pillar on Social Rights

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Co-funded by
the European Union

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Foreword

The treatment of migrants who work and contribute to our economic and social system is central to the credibility and future of Europe's Social Model. Their situation exposes deep and worsening inequalities that shape our economies and destabilise the labour market. Too often, migrant workers find themselves forced into a cycle of dependence and vulnerability: low job security, temporary or employer-tied permits and complex administrative procedures strip them of bargaining power and expose them to exploitation. This is coupled with fear of deportation or loss of employment that prevents them from reporting abuse. This furthers a climate of impunity for exploitative employers, which in turn lowers labour standards and wages for all workers, undermining hard fought gains. When insecurity spreads, trust in the promise of our social contract erodes; it deepens political divides and feeds resentment. Ensuring fair conditions for migrant workers is thus both a matter of principle of equal rights, as well as sound public policy to strengthen the resilience of our democratic model.

The first Action Plan for the European Pillar of Social Rights (EPSR) was an important step in the right direction. It anchored employment and social policy at the centre of the EU agenda and reaffirmed the Union's commitment to a fair and inclusive Europe. Yet implementation has been uneven to say the least. Many of the twenty principles of the



Mikael Leyi,
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Pillar remain aspirational, particularly for people and communities facing multiple and intersectional forms of discrimination and exclusion. Lack of political will, insufficient enforcement, fragmented national approaches, and limited resources continue to obstruct progress.

Today, 93.3 million people, one in five Europeans, including nearly one in four children, remain at risk of poverty or social exclusion¹. For third-country nationals, the rate is 43.8%², almost double that of EU citizens. But poverty alone does not explain the full extent of inequality, in the labour market the divide becomes even more visible. Between 2014 and 2024, non-EU citizens consistently had the highest share of employees with a limited-duration contract³. Over the same decade, the over-qualification rate for non-EU citizens remained the highest in the EU, decreasing only from 45.9% in 2014 to 39.6% in 2024, compared with 30.3% for other EU citizens and around 20% for nationals⁴. For those without regular status, available statistics focus almost exclusively on returns, reflecting a

¹ Eurostat. *Living conditions in Europe - poverty and social exclusion (2025)*

² Eurostat. *Migrant integration statistics - poverty and social exclusion (2025)*

³ Eurostat. *Migrant integration statistics - employment conditions (2025)*

⁴ Eurostat. *Migrant integration statistics - over-qualification (2025)*



*Migrant seasonal workers pick strawberries in a field - Neuoetting, Germany.
Author: Jesus Fernandez, Shutterstock*

concerning emphasis on the legality of people rather than on our societies' capacity to provide fair and dignified living and working conditions for all who live and contribute within them⁵.

These realities point to a broad failure to integrate third-country nationals and to address deep disparities in access to social protection, decent work, and essential services. As this paper shows, Europe's social acquis promises equal treatment for all workers, yet migrant workers, particularly those in precarious or undocumented situations, have limited access to social rights and remain excluded from the full protection of labour law.

The forthcoming revision of the Action Plan of the European Pillar of Social Rights offers an opportunity to correct these shortcomings. It must ensure that all workers, regardless of status, enjoy fair working conditions, decent living standards and effective access to justice when their labour rights are violated. *In doing so, the next Action Plan should strengthen coordination with other flagship EU initiatives such as the EU Anti-Poverty Strategy, the Quality Jobs Roadmap, the European Affordable Housing Plan and a Clean Industrial Deal aligned with the European Green Deal. Together, these*

frameworks must form a coherent Just Transition strategy that delivers decent work, fair wages and climate justice for all.

These objectives cannot be achieved without adequate financial support. The post-2027 Multiannual Financial Framework must also match the social ambition with sufficient resources, including earmarked funding within the National Reform and Progress Programmes (NRPPs) to guarantee sustained investment in social protection, inclusion, poverty eradication, asylum, integration and inclusion policies. Clear targets and indicators should guide implementation and monitoring. Investing in people and communities is not a cost; it is a prerequisite for resilience, competitiveness, and trust in the European project.

A fairer and more universally applied European Pillar of Social Rights, grounded in stronger protection for all workers regardless of their status, is absolutely central to achieve a Social Europe. But to win it we need concrete solutions to real problems. This is part of the solution to counter racist policies, the sirene song of right-wing populists and possibly turn the reactionary political tide.

⁵ Eurostat. *Enforcement of immigration legislation statistics (2025)*

Introduction

Migrant workers generally receive lower wages and fewer benefits and, work longer and more irregular working hours. These circumstances put them in a more precarious situation than EU citizens. In particular, migrant workers with a short-term, precarious or irregular status, often experience wage theft and an increased risk of workplace accidents that can have an adverse impact on their health and wellbeing. In addition to violating their labour rights, these unfair working conditions delay and prevent migrant workers' inclusion in society.

The (labour) rights protection for migrant workers is determined, not by the nature of their employment, but by their migration status. A fragmented system of legal categories – seasonal, temporary, long-term, or irregular – undermines the principle of universal labour rights and creates unequal access to core labour standards such as fair pay, safe conditions, and collective representation.⁶ In this framework, fundamental rights – such as fair remuneration, safe working conditions, or access to collective representation – become conditional upon a worker's migration status rather than their role within the employment relationship. As a result, migrant workers are at a higher risk of encountering labour law violations, ranging from minor to severe infringements.

This reality is particularly acute for temporary and irregular migrant workers, as they are at an increased risk of labour exploitation due to insecure or precarious residence status, economic hardship, lack of rights awareness, language barriers, weak enforcement, and discrimination – factors that must be addressed to protect migrant workers in the EU.⁷

Temporary labour migration schemes often tether residence rights to a single employer, fostering a climate of dependency and deterring the reporting of abuse.⁸ Meanwhile, **workers without regular status** despite formal entitlements under EU law – are reluctant to exercise their rights before national labour enforcement authorities due to the ever-present fear of deportation. The disconnect between rights in principle and rights in practice for these workers constitutes a critical gap in the EU's legal order.⁹ In short, the very workers most in need of protection are the least able to claim it under the current system.

The **European Pillar of Social Rights (EPSR) and its Action Plan** are meant to act as a compass toward a robust social Europe. The Pillar sets out 20 principles and rights intended to act as a compass towards a strong and fair social Europe. Translated into ambitious and

6 Freedland, M. & Costello, C. (2014). 'Migrants at Work and the Division of Labour Law'. In C Costello & M Freedland (eds) *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford University Press 2014).

7 European Union Agency for Fundamental Rights (FRA) (n.d.). *Protecting migrant workers from exploitation – FRA opinions*; FRA (2018). *Protecting migrant workers from exploitation in the EU: boosting workplace inspections*.

8 For an overview of the policy and legal framework surrounding labour migration and its implications for short-term migrant workers, see also one of the earliest works in this area: Ruhs, M. (2013). *The price of rights: Regulating international labor migration* (Princeton University Press 2013).

9 Fox-Ruhs, C. & Ruhs, M. (2022). *The Fundamental Rights of Irregular Migrant Workers in the EU: Understanding and reducing protection gaps*. European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs.

transversal policies, it has a real potential to improve the well-being of people in Europe, including marginalised groups, by promoting equal opportunities and access to the labour market, fair working conditions and social protection and inclusion. Indeed, the Pillar underscores the “the need to enhance social rights and strengthen the European social dimension across all policies of the Union as enshrined in the treaties.”¹⁰

Migrant workers, particularly with a short-term, precarious, or irregular status, are not directly addressed. The silence of the Pillar and its Action Plan on the inclusion and integration of migrant workers into social Europe is to be lamented and must be addressed to realise the economic and social progress that the Pillar strives for in the European Social Model.¹¹ To address this lacuna, the revision of the EPSR Action Plan provides a timely opportunity to embed migrant workers’ rights at the heart of EU social policy. The revised EPSR Action Plan should explicitly recognise the lived realities of (temporary and irregular) migrant workers, ensuring that fair working conditions and fundamental labour rights are not contingent on migration status. In essence, Europe’s social rulebook must evolve so that everyone in Europe has the same chances in life – from fair wages and safe workplaces to social protection – regardless of origin or status. This reorientation aligns with broader policy developments in the EU aimed at strengthening social rights and job quality. The European Commission’s forthcoming “Quality Jobs” package is one such initiative: outlined in the 2025 Commission Work Programme, it will focus on supporting fair wages, safe and

decent working conditions, access to training, and smooth labour market transitions for all workers. Quality jobs are seen as key to ensuring workers are treated fairly and rewarded for their efforts, as well as to boosting Europe’s economic resilience.

These policies, as well as those that aim at improving the recruitment of migrant workers in the EU (namely, Talent Partnerships and the Talent pool Proposal), reflect the reality that across the EU, Member States will increasingly rely on migration to address acute labour market shortages. This trend is clearly acknowledged by national labour migration policy measures that seek to accelerate labour market integration e.g., elimination of labour market tests in professions where there is a labour market shortage and, shorter periods until applicants for international protection can access the labour market. However, social inclusion and integration policies do not reflect the trend of increased migrants, including asylum seekers and refugees (with the exception of perhaps Germany and significant investment in social inclusion initiatives) and far more action is required from Member States. Despite a significant lack of political will to reciprocate the economic added-value of a migrant labour workforce by supporting their social inclusion, the capacity of national authorities is clearly demonstrated by the generous initiatives that were swiftly implemented to facilitate the influx of Ukrainians seeking temporary protection. The principles of the Pillar and their operationalisation through the EPSR Action Plan can play a part in addressing this deficit.

¹⁰ European Commission. (2021). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Pillar of Social Rights Action Plan, COM/2021/102 final, 4 March 2021, p. 2.

¹¹ La Hulp Declaration on the Future of the European Pillar of Social Rights, 16 April 2024.

In light of this context, critical analysis of the European labour migration acquis, (EU) labour law, and enforcement mechanisms is timely to ascertaining the extent to which the revised ESPR Action Plan can be leveraged in order to realise decent and fair working conditions for all migration workers active on the European Labour Market, regardless of migration status and contribute to a “fair enforcement ecosystem” of labour rights.¹² In light of the upcoming review, the study aims at:

- ▶ Analysing the state of play of the relevant national and EU labour standards framework (including under the European Pillar of Social Rights) as it applies to migrant workers (I);
- ▶ Identifying gaps in addressing the specific challenges faced by migrant workers, including workers with a short-term, precarious, or irregular status, in enjoying fair working conditions (II);
- ▶ Identifying the barriers that may prevent migrant workers, including workers with a short-term, precarious, or irregular status, from enjoying fair working conditions with special attention to access to justice and representation from trade unions and civil society organisations (III).

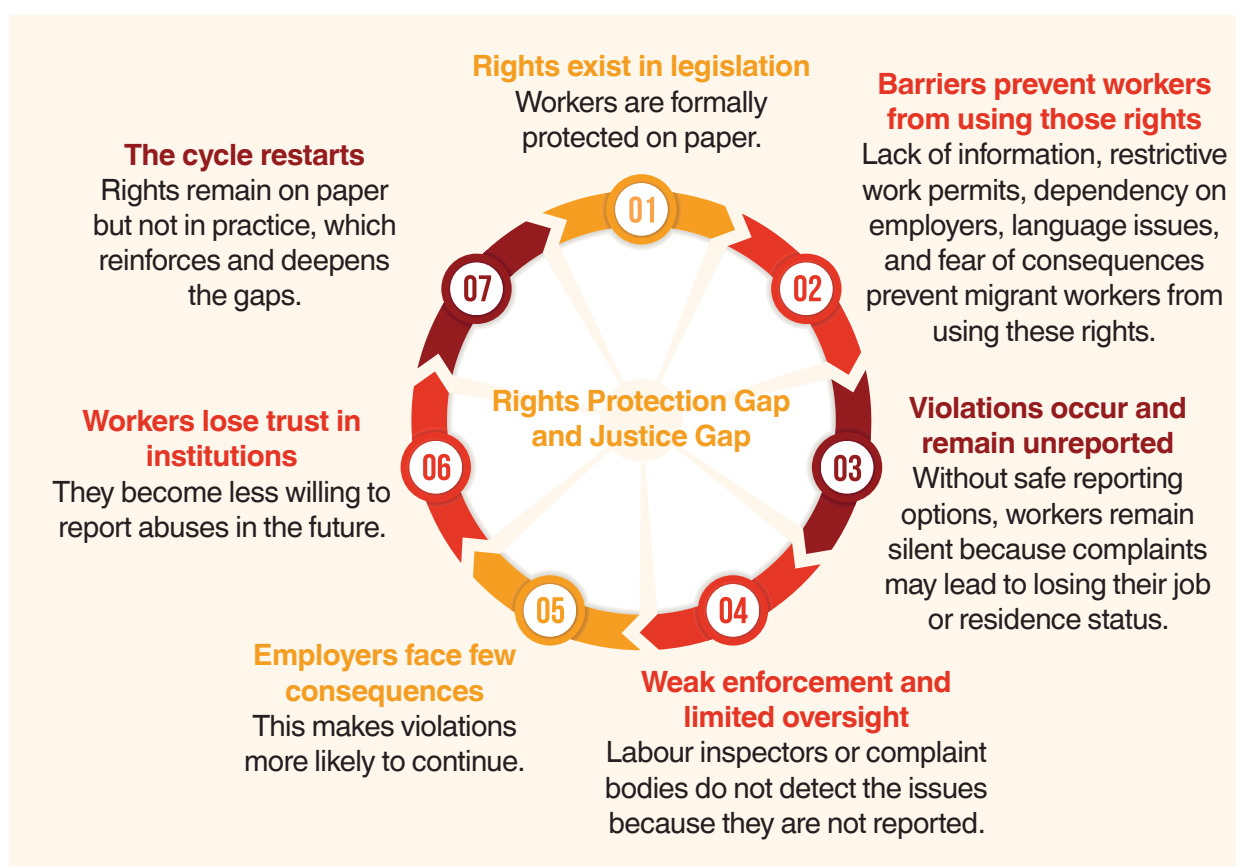
In addition, two case studies focusing on temporary migration in Italy and migrant workers in an irregular situation in Belgium examine the state of play and identify the gaps in the current EU migration and work permit policy frameworks in addressing unfair working conditions.

¹² Countouris, N. (2024). ‘Effective labour rights in the EU: towards a fair enforcement ecosystem’ *European Labour Law Journal* 15(4), 641-656.

The Reinforcing Nature of the Rights Protection Gap and Justice Gap

Rights protection gap	The rights protection gap refers to the disconnect between the formal recognition of migrant workers' rights in law and the extent to which those rights are exercised in practice.
Justice gap	The justice gap refers to the disparity between the existence of legal rights and the actual ability of migrant workers to seek and obtain redress when those rights are breached.

The rights protection gap and the justice gap reinforce each other and form a cycle that keeps violations hidden and unaddressed.



Methodology and scope of the study

The study aims to develop meaningful recommendations by engaging with two key structural elements that currently hinder the realisation of decent and fair working conditions and can be considered as legal lacunas that result in an increased risk of exploitation of migrant workers, especially those in precarious or irregular situations: **the rights protection gap** and **the justice gap**. Despite the gravity of these gaps affecting precarious and irregular migrant workers, this reality remains largely invisible in policymaking spaces. The aim of this study will be to confront that invisibility. It proposes to investigate how (EU) labour standards and labour migration policies, enforcement regimes, and worker representation structures currently (fail to) serve migrant workers, especially those in precarious or irregular situations.

In addition to a literature review, the study includes an empirical component comprising a survey and semi-structured interviews with trade unions and civil society organisations who play an essential role in supporting migrant workers to access their labour and social rights. The study did not engage directly with employers' organisations or migrant workers. The survey was circulated to more than 50 stakeholders, with 15 responses received from EU and national level trade unions and civil society organisations (S01 – S15). Given the target group of EU focused organisations, the majority of respondents did not have direct contact assisting migrant workers, but rather advocated for the promotion and protection of labour rights, including migrant workers and social justice. This work in turn facilitated the work of affiliates at national level who provide front-line services. Five semi-structured interviews have been carried out with national representatives of civil society and trade

unions in Belgium and Italy with direct contact with migrant workers, providing support, advice, and guidance with a view to promoting and protecting their rights. A mixed method approach provides the necessary evidence-base to develop robust recommendations on strengthening fair and just working conditions in EU policy frameworks, most notably in a revised ESPR Action Plan, as well as in the Quality Jobs package and Fair Labour Mobility package which will impact policy frameworks at national level.

With a view to embedding migrant workers' rights at the heart of EU social policy, this study considers the protection and enforcement of migrant workers' right to fair and just working conditions. The challenges and barriers to the realisation of fair and just working conditions have been identified and analysed in accordance with the following elements:

- ▶ (EU) labour standards for migrant workers
- ▶ The legal and policy barriers to enforcement of fair and just working conditions for migrant workers
- ▶ The practical barriers to enforcement of labour standards including access to representation and remedies and complaint mechanisms
- ▶ The discrepancies between formal labour (protection) standards and their implementation in practice.

This study looks at the fair working conditions of all third-country nationals residing in an EU Member state for the purpose of employment. The study pays particular attention to temporary labour migrants e.g., seasonal workers and irregular migrant workers. Intra-EU mobility of EU citizens does not fall within the scope of this study.

1 Labour Migration in a Social Europe

1.1 (Labour) rights according to migration status

The relationship between migration status and labour rights enjoyment is central to understanding the position of migrant workers in the EU labour market. While international, regional and EU instruments affirm that all workers are entitled to fundamental rights and protections, the extent and enforceability of these rights in practice often depend on the legal categories created by migration law.



The EU is committed to the fair and equal treatment of legally residing third-country nationals, aiming to align their rights and obligations with those of EU citizens.¹⁴ This commitment has taken shape through the establishment of the EU labour migration acquis that regulates the conditions of entry and residence, for the purpose of pursuing employment, and the definition of rights of third-country nationals, including the right to equal treatment (Article 79 TFEU). However, the EU labour migration acquis' current design

is characterised by a fragmented regulatory approach that differentiates between migrant workers according to professional status. The categorical model attributes rights and according to economic category: the Single Permit Directive EU (2024/1233), the Blue Card Directive (2021/1883/EU), the Student & Researchers Directive (2016/801/EU), the Intra-Corporate Transfer Directive (2014/66/EU), and the Seasonal Workers Directive (2014/36/EU). Consequently, the contribution of the extra-EU workforce is premised on a

¹³ Other UN instruments also contribute to the protection of migrants by addressing discrimination and exploitation on broader grounds. These include the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); and the Convention on the Rights of the Child (1989), which provides guarantees to children irrespective of status. These instruments complement the ICRMW and the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, which applies universally to all workers.

¹⁴ European Council. (1999). Resolution on the extraordinary European Council meeting on the area of freedom, security and justice (Tampere, 15-16 October 1999) OJ C 54, 25.2.2000.

two-tier system: highly skilled migrants are granted ‘citizenship rights’ and lower-skilled migrants become ‘denizens’ as they are entitled to “significantly less citizenship rights,”¹⁵ thus creating a reality whereby some migrants are “more equal than others.”¹⁶ In addition, the EU has the competence to support and complement Member States’ action in employment and social policy, including explicitly the “conditions of employment for third-country nationals legally residing in Union territory” (Article 153(1)(g) TFEU).¹⁷ Crucially, the Court of Justice in *Tümer* (C-311/13)¹⁸ established that EU labour law applies to all workers, even those in an irregular situation. However, at national level, where (EU) law meets reality, the realisation of labour rights is constrained by the filters of migration law, and its enforcement.

Consequently, the interaction between migration law and labour law often produces a divisive effect. Migration law not only overlays existing distinctions within labour law but also creates new ones by introducing (professional) status-based categories and, in some instances, tied residence conditions.¹⁹ The patchwork regulatory response to the status of migrant workers subsequently embeds precarity and heightened vulnerability into the employment relationship.²⁰ This fragmentation entrenches divisions between groups of migrant workers

and renders the enforcement of rights more precarious, contributing to a persistent rights protection gap.

These challenges are even more acute for migrant workers in an irregular situation to whom, again, recognition of labour rights in practice varies considerably across Member States. In some Member States, migrants in an irregular situation benefit from partial recognition of fundamental rights, for example, access to healthcare beyond emergency treatment and limited labour rights, while in others, such rights are narrowly restricted or withheld altogether.²¹ This diversification is again further compounded by a persistent tension between fundamental rights protection and immigration control.²²

The adoption of the Pact on Migration and Asylum has done little to recalibrate the landscape, as labour migration remained a secondary concern, with no major new instruments and persistent gaps, particularly for low- and medium-skilled workers, left unaddressed.²³ In this context, the revision of the ESPR Action Plan cannot itself develop or harmonise the labour migration acquis, but it can fill the protection and justice gaps and help mitigate some of the shortcomings of the current framework.

15 Bregiannis, F. (2021). ‘An analysis of the EU Seasonal Workers Directive in the light of two similar regimes: Three dimensions of regulated inequality’ *European Labour Law Journal* 12(3) 266–279, p. 276.

16 Zoetewij-Turhan, M.H. (2017). ‘The Seasonal Workers Directive: ‘... but some are more equals than others’ *European Labour Law Journal* 8(1), 28–44.

17 It should be noted, however, that this legal basis has never been used to adopt EU secondary legislation.

18 Judgment of 5 November 2014, O. Tümer v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen, C-311/13, ECLI:EU:C:2014:2337.

19 Verscheuren, H. (2023). ‘Equal treatment as an instrument of integration. The CJEU’s case law on social rights for third-country nationals under the EU migration directives’ *European Journal of Social Security* 25 (3), 243–260.

20 Freedland & Costello (2014), n. 6.

21 FRA. (2021). *Fundamental Rights of Migrants in an Irregular Situation in the European Union*.

22 Fox-Ruhs & Ruhs (2022), n.9.

23 Farcy, J. B., & Sarolea, S. (2022). Labour Migration in the ‘New Pact’: Modesty or Unease in the Berlaymont? In *Reforming the Common European Asylum System*, Nomos Verlagsgesellschaft mbH & Co. KG, February 2022, pp. 277–288.

1.2 The European Pillar of Social Rights

The European Pillar of Social Rights (ESPR) lists 20 principles that set the standard for social policy in the EU. Whilst the Pillar is silent as to the specific needs of migrant workers as its focus is primarily aimed at EU citizens, this study focuses on ten of the principles that can contribute to the realisation of fair and just working conditions for all workers regardless of status. Crucially, these principles draw upon existing sources of EU labour law where migrant workers' rights, protections and entitlements may also be derived.²⁴

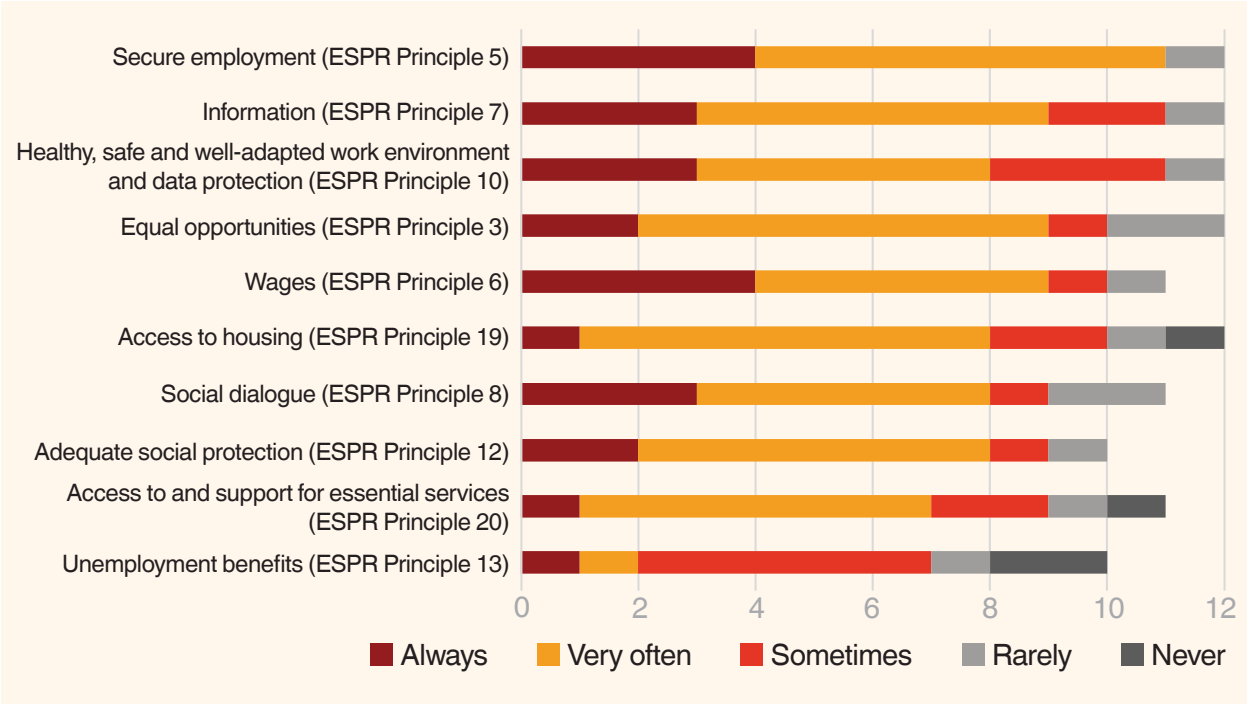
Overview of the European Pillar of Social Rights with the 10 principles from which the study is designed

	ESPR Principle 3	Equal opportunities: discrimination on the basis of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public.
	ESPR Principle 5	Secure employment including fair and equal treatment regarding working conditions, access to social protection and training, prevention of precarious working conditions and abuse of atypical contracts.
	ESPR Principle 6	Wages that provide for a decent standard of living including transparent, predictable and adequate minimum wages.
	ESPR Principle 7	Information about employment conditions and protection in case of dismissals.
	ESPR Principle 8	Social dialogue on design and implementation of economic, employment and social policies and involvement of workers including right to be informed and consulted on matters relevant to them.
	ESPR Principle 10	Healthy, safe and well-adapted work environment and data protection.
	ESPR Principle 12	Adequate social protection regardless of the type and duration of their employment relationship.
	ESPR Principle 13	Unemployment benefits adequate activation support from public employment services to (re)integrate in the labour market.
	ESPR Principle 19	Access to housing, protection against forced eviction and assistance for homeless.
	ESPR Principle 20	Access to and support for essential services of good quality, including water, sanitation, energy, transport, financial services, and digital communications.

²⁴ Pavlou, V. (2021) Migrant Domestic Workers in Europe: Law and the Construction of Vulnerability (Hart, 2021).

The survey respondents confirmed that these ten principles are the most prevalent (to varying degrees) in their work either advocating on behalf of migrant workers or directly supporting and facilitating the enforcement of social rights.

Most prevalent pillar related issues for migrant workers



Despite the clear linkages between the Pillar principles and the fair and just working conditions of migrant workers, there is currently a significant disconnect in the implementation of the Pillar. The first ESPR Action Plan is silent as to the role of rights of migrant workers. The situation of migrant workers and the realisation of their rights is hampered by the tacit acceptance a two-tiered labour market,²⁵ whereby the rights and entitlements enshrined by the Pillar principles are set aside and sub-standard protection is tolerated,²⁶ especially in relation to: the denial of rest periods, annual leave, or sick leave; unpaid wages or wages not paid in full (below minimum wage or collective agreements), unpaid overtime (S01, S10);

lack of access to housing (S05), sub-standard accommodation and poor living conditions provided by employers (S10, S12); lack of social security (posted TCNs, irregular migrants) (S10) and access to essential public services such as healthcare (S05).

Migration-related vulnerabilities stemming from the attribution of a status premised upon professional category are further exacerbated by complex and restrictive migration procedures (S02) such as tied residence permits to employment (S11) and the restrictions on right to change employer (S01). As a result, the precarity of temporary labour migrants can be heightened by the dependency on employers,

25 Collins, H. (2024) 'Segmented labour markets, structural injustice and legal remedies' in Mantouvalou, M., and Wolff, J., (eds) Structural Injustice and the Law (University College London Press, 2024) 105-128.

26 de Lange, T., & Rijken, C. (2018). 'Towards a Decent Labour Market for Low-Waged Migrant Workers: An Introduction' in T. de Lange & C. Rijken (Eds.), Towards a Decent Labour Market for Low-Waged Migrant Workers (Edward Elgar Publishing, 2018).

stemming from restrictions on their right to change jobs.²⁷ Consequently, migrant workers are frequently denied the possibility to realise their full professional potential due to lack of recognition of foreign qualifications and non-formal skills and lengthy and costly foreign qualification recognition procedures (S11); and overqualification (S06). This tacit acceptance of a (highly mobile) labour force that are denied basic recognition of their rights contributes to a race to the bottom that is characterised by fraudulent and abusive employment practices including bogus employment, abuse of fixed term contracts, abuse of traineeships, sham companies, abuse of posting (S06) and abusive subcontracting and labour intermediation (S12, S14). In some cases, these issues are further hindered by structural barriers such as the use of long subcontracting chains and difficulties in establishing an bona fide employment relationship (S03a, S13, S14).

“Most of the issues raised are worsened by abusive subcontracting arrangements, bogus self-employment and ineffective cross-border enforcement of rights (e.g., unpaid wages, non-recognition of social security contributions, poor/inadequate OSH training, poor quality accommodation and discrimination on the basis of race and country of origin).” (S14)

The experiences of discrimination and racism referenced in the above citation also has an impact on migrant workers beyond the workplace, with significant barriers faced in relation to access to health care, affordable and adequate housing, and education. These wider

experiences hinder their social integration and inclusion, severely undermine their equality of opportunities, and heighten their vulnerability to precarious employment (S13). These issues are all directly connected to one or more of the Pillar principles, indicating that EU social policy must be inclusive of migrant workers. These examples demonstrate that effective enforcement in practice is a necessity for migrant workers will truly benefit from their rights and entitlements. Indeed, stakeholders seeking to protect the rights of migrant workers, with a view to promoting their social and labour integration place significant emphasis on the weak enforcement of labour standards by labour inspections (S02, S11, S12) and in access to justice to secure remedies and compensation (S05), and a sense of impunity amongst exploitative employers who are not sufficiently sanctioned (S01). Furthermore, the explicit exclusion of migrant workers that prohibits their social and labour integration, due to barriers in accessing legal aid, trade union representation, experiences of discrimination and unequal treatment on the basis of gender, origin and status both in the labour market (S02, S05, S11, S12).

For the realisation of a fully comprehensive approach addressing the justice and protection gap that will in turn guarantee and safeguard the needs of migrant workers, the applicability of the Pillar principles to all workers regardless of migration status must be explicitly recognised.

²⁷ de Lange T., & Falkenhain, M. (2024). 'Precarity prevented or reinforced? Migrants' right to change employers in the recast of the EU Single Permit Directive' *Front Sociology* 2024 Jan 11;8:1267235. See also Zou M. (2015). 'The legal construction of hyper-dependence and hyper-precarity in migrant work relations; *International Journal of Comparative Labour Law Industrial Relations* 31, 141–162; Martin, P. (2021). *The prosperity paradox*, in *Fewer and More Vulnerable Farm Workers* (Oxford University Press, 2021). Weatherburn, A. (2024). 'Working in Europe with a Single Permit: Golden Ticket or Pie in the Sky?' *European Journal of Migration and Law* 26(4), 446–473.

2 Closing the Rights Protection Gap: (EU) labour standards in law and policy realising (un)fair working conditions

Across the EU, migrant workers, both in a regular and in an irregular situation, make essential contributions to national labour markets, yet often under conditions that highlight the gap between rights in law and rights in practice.

For those with a regular legal status, the principle of equal treatment is recognised but applied unevenly. EU labour migration policies are often designed to admit workers to fill shortages in low-wage sectors, yet the protection and equal treatment afforded to those workers once admitted remain limited. Legal pathways into such employment are narrow, national schemes, which typically allow only temporary admission, provide limited social rights protection, and offer few opportunities for vocational training or longer-term integration. EU labour migration rules were intended to improve the balance by linking admission with rights guarantees. However, the broad discretion afforded to Member States in implementing these Directives results in significant variation in practice at national level, leaving room for deviations to lower standards.²⁸

For migrants with an irregular legal status, entitlements are systematically constrained with some protection in areas such as emergency

healthcare, compulsory education for children, and claims for unpaid wages.²⁹ By contrast, access to housing, minimum income support, and vocational training is generally absent or highly restricted. Even where formal rights exist, their use is undermined by financial costs, administrative barriers, and the lack of effective capacity to claim them.³⁰



A firewall (also called a safe reporting mechanism) refers to a legal, technical, and organisational separation between immigration enforcement authorities and public bodies or service providers, such as labour inspectorates, health services, social services, the police, or education authorities. Under a firewall, these institutions are prohibited from sharing individuals' personal data or immigration status with immigration enforcement and must not act as de facto agents of migration control.

A central issue is the **absence of firewalls between public services and immigration enforcement**. Primarily, the lack of a firewall between labour inspection services and immigration enforcement further intensifies the fear of retaliation and deportation that prevents migrants from safely reporting abuses. This means that the act of claiming rights can trigger immigration control, this in turn has the

²⁸ de Lange & Rijken (2018), n. 26.

²⁹ Fox-Ruhs, C., & Palme, J. (2025). *Measuring and Analysing the Social and Labour Rights of Irregular Migrants: New Indicators for Twenty-Eight European Countries*, PRIME (Protecting Irregular Migrants in Europe) Research Paper.

³⁰ Ibid.

effect of deterring individuals from exercising the protections they hold in law. The result is a contradiction. Rights are recognised in principle, but the mechanisms of immigration enforcement render them difficult and insecure to exercise in practice.³¹ Advocates for the introduction of firewalls emphasise that a separation between immigration control and public service provision – including access to healthcare and education – is essential to enable migrant workers to safely report abuses and access their rights.³² Scholarship has shown that firewall policies not only increase reporting but also enhance inspectorates' perceived legitimacy in migrant communities. Firewall protections restore confidence in public institutions and uphold their integrity, while their absence discourages reporting, fuels exploitation and informality, and erodes trust in law enforcement and the rule of law.³³

Rights are experienced, they are not abstract principles. They are mediated through daily interactions between persons and institutions, and with employers in the case of labour rights. In these interactions, for migrant workers, the distance between law on the books and law in action becomes visible. Migrant workers are essential for the European labour markets, yet the exercise of their rights remains limited and insecure. This situation points to a rights protection gap at the core of EU labour migration regimes. Legal and institutional frameworks intended to secure rights provide fragmented and uneven coverage. Their effectiveness is

further reduced by the constant tension with immigration enforcement, which restricts the practical use of rights. The result is a persistent gap between rights recognition and rights realisation, that shapes the everyday lives of many migrant workers in the EU.

2.1 Enforcement of labour standards

Both existing scholarship and the empirical fieldwork conducted as part of this study identify the main barriers or challenges to enforcement of migrant workers' rights. Stakeholders seeking to improve the enforcement of labour standards identified language barriers (S01, S02, S03b, S04, S09, S10, S11, S13, S14) and lack of information and awareness of their rights (S01, S02, S03b, S04, S05, S07, S09, S10, S11, S13, S14) as a key barrier to enforcing migrant workers' rights.³⁴ Consequently, migrants are deemed to have a lack of trust in authorities (S02, S03b, S04, S10, S11, S12) for fear of deportation and retaliation (S02, S03b, S04, S05, S07, S10, S11, S13, S14) which in turn increases their dependence on their employer for information (S02, S10, S11, S14), social isolation and exclusion (S03b, S04, S06).

The findings resonate with the broader vulnerabilities highlighted in the literature which underline that migrants' restricted access to social and legal resources deepens their dependency on employers.³⁵ Other scholars

31 Fox-Ruhs & Ruhs (2022), n.9.; Fox-Ruhs & Palme (2025), n. 29.

32 See, for example: PICUM. (2025) *Reporting obligations and 'firewalls'* 17 January 2025; FLEX. (2019). Time for a firewall: ensuring safe reporting for victims of exploitation.

33 Crépeau, F., & Hastie, B. (2015). 'The case for "firewall" protections for irregular migrants: Safeguarding fundamental rights' *European Journal of Migration and Law* 17(2–3), 157–183.

34 FRA. (2019). Protecting migrant workers from exploitation in the EU: workers' perspectives, p. 72; Weatherburn, A., Toft, A., (2016). 'Managing the Risks of Being a Victim of Severe Labour Exploitation: Findings from a Research Project Exploring the Views of Experts in the UK' *Industrial Law Journal* 45(2), 257–262.

35 Bretones, F. D. (2020). 'Migrant workers, hazards and vulnerability' in Bretones, F.D., & Santos, A., *Health, Safety and Well-being of Migrant Workers: New Hazards, New Workers* (Springer, 2020), 9-22.

similarly note that insufficient knowledge of available protections, combined with limited linguistic skills, not only reduces migrants' ability to navigate support systems but also increases their exposure to exploitation.³⁶ Employers take advantage of the lack of knowledge. This sense of impunity is further galvanized by the fact that complaints mechanisms are ineffective (S01): migrant workers are fearful of reporting abuses either due to retaliation by the employer leading to loss of employment (S01, S02, S07, S09, S14), accommodation where it is employer-provided (S13, S14) and – where residence is tied to employment – loss of residency (S01, S11, S13, S14).

Employers use a combination of coercion and structural strategies to keep migrant workers in exploitative situations, including threats of dismissal, wage withholding, reporting to immigration authorities, and false promises of regularisation or payment.³⁷ These are effective because they exploit dependencies deliberately created by employers, who often control not only wages but also housing, transport, and access to administrative procedures. **Dependency-creating strategies** such as **isolation** and **irregular or opaque financial practices** systematically bind workers to their employer, reinforces control and leaves them without alternatives and vulnerable to abuse.³⁸ This is especially the case where the design of the labour migration regime itself is a struc-

tural factor that further entrenches employer dependence where, particularly where residence status ties the worker to their employer (S03b, S09, S10, S13), and the possibility to change employer is restricted (S02, S10).

Discrimination and unequal treatment are also considered to be key drivers of non-enforcement of migrant workers labour rights (S03b, S04, S13) and are further heightened for migrant women working in domestic and care sectors (S11). One way to counter this is through legal avenues that allow challenges to the exclusion of third-country nationals from social rights on the grounds of nationality, residence status, or migration status. Such mechanisms help bridge the rights protection gap between EU and non-EU workers. Strategic litigation before national and EU courts can be a powerful tool to contest “migration exceptionalism”³⁹ by exposing discriminatory rules (for example, in access to benefits or health care) pressing courts to interpret equal treatment provisions more broadly and gradually reducing the scope for derogations.⁴⁰ In this way, legal strategies rooted in EU equality provisions and the Charter not only secure remedies for individuals but also contribute to dismantling forms of exclusion.

Preventing irregular migration is not achieved solely through enforcement; it also requires proactive measures that expand opportunities for **regularisation and accessible legal**

36 Sargeant, M., & Tucker, E. (2009). 'Layers of vulnerability in occupational safety and health for migrant workers: case studies from Canada and the UK' Policy and practice in health and safety 7(2), 51-73. See also: Underhill, E., & Rimmer, M. (2015). 'Layered vulnerability: Temporary migrants in Australian horticulture' Journal of Industrial Relations 58(5), 608-626.

37 FRA (2019), n. 34.

38 Overgaard, C. H., & Høgedahl, L. (2024). 'Employer strategies for undermining migrants' power resources: Evidence from the Danish construction sector' Economic and Industrial Democracy, 0143831X241287099; FRA (2019), n. 34.

39 *Migration exceptionalism* refers to the treatment of migration as a legal and policy domain where ordinary non-discrimination principles are weakened, allowing states to justify restrictions on third-country nationals' social and labour rights. This results in structural protection gaps between EU and non-EU workers, which litigation strategies seek to close. Baas, H. (2025). 'Challenging 'migration exceptionalism' in EU anti-discrimination law: Enhancing equal access to social rights for third-country national workers' Transfer: European Review of Labour and Research, 10242589241312075.

40 Ibid.

migration channels (S10, S11). International organisations,⁴¹ NGOs,⁴² and think tanks⁴³ have repeatedly stressed the need to further expand complementary pathways such as labour mobility, education, family reunification, and humanitarian admission.

Regularisation mechanisms are fundamental (S11). Operation Papyrus in Geneva illustrates how bottom-up, participatory regularisation can bring irregular low-waged migrants into the legal system through transparent criteria and a mix of humanitarian and economic rationales.⁴⁴

The provision of **(temporary) residence permits during proceedings against employers** to provide certainty around the migrant worker's migrant status has also been identified by survey respondents (S06, S12). Under the Employer Sanctions Directive, Member States may issue temporary residence permits to third-country nationals who are victims of particularly exploitative employment or minors, allowing them to stay for the duration of proceedings against their employer. However, research into the national implementation of the Directive's provisions related to temporary residence permits reveals that these permits are rarely granted in practice and often made conditional on cooperation with criminal investigations, which limits their protective function.⁴⁵

The **lack of labour inspections** directly at the workplace is a significant barrier to enforcement (S11) that is compounded by a lack of resources

(S02, S12, S14) and lack of sanctions on employers (S01, S03a, S13, S14) that can, where imposed, be passed onto the worker (e.g., fines) (S01). Consequently, migrant workers have a lack of interest in pursuing their rights because their salary is still better than in their home country (S07); they accept abusive conditions to reach continuous legal status (S05, S10) and, above all, breaches of migrant workers' rights are normalised:

"It happens because the violation of the labour rights of migrants has been normalised in many sectors of activity, mainly hospitality, agriculture, food and care. The people who work in them are unprotected and do not feel "legitimized" to defend their rights, and in most cases, they are unaware of it." (S13 - translated)

Where labour inspections do take place, a **lack of trust in authorities** is also identified as a barrier to effective detection and identification of rights violations. This is further heightened where, as previously mentioned, there are no firewalls in place and labour inspection and monitoring authorities have an obligation to report irregular migrants to immigration authorities (S01, S10):

"Migrant workers are unable to complain to labour authorities for fear of inspections being accompanied by police, or inspectors disclosing information to immigration authorities." (S01)

41 UNHCR. (2019). *Position on Legal and Safe Pathways*. Geneva.

42 Falzon, N., & Wijnkoop, M. (2017). *Protection in Europe: Safe and legal access channels (Policy Paper No. 1)*. European Council on Refugees and Exiles.

43 Fratzke, S., & Zanzuchi, M. B. (2024). *Complementary pathways: Key factors in future growth*. Migration Policy Institute.

44 Della Torre, L. (2018). 'Bottom-up Approaches to the Regularisation of Undocumented Migrants: The Swiss Case' in C. Rijken & T. de Lange (Eds.), *Towards a Decent Labour Market for Low-Waged Migrant Workers* (Amsterdam University Press, 2018), pp. 231–246.

45 FRA. (2021). *Protecting migrants in an irregular situation from labour exploitation: Role of the Employers Sanctions Directive*.

Consequently, the enforcement of migrant worker's rights can be significantly improved by **introducing a firewall between labour market enforcement and immigration authorities** that prohibits information sharing will enable migrant workers (irregular or otherwise) to report abuse safely (S01, S02, S05, S10, S11). Whilst most survey respondents referred to firewalls and reporting obligations between labour enforcement and immigration authorities, the same goes for other public service providers such as healthcare, education, social welfare, who also are likely to come into direct contact with migrant workers who have experienced issues with their employment. At the European policy level, the European Commission's proposed Return Regulation,⁴⁶ can further compound this climate of fear. The new proposal is based on a securitised approach that prioritises swift returns, including through use of accelerated border procedures and expanded grounds for detention, which may compound migrant workers' fear of authorities.⁴⁷

To role of the **European Labour Authority (ELA)** was identified as a possible means of providing **support to national labour inspectorates in cross-border enforcement** (S08, S14). The ELA is positioned as a crucial node linking coordination, monitoring, and capacity-building across Member States but remains largely confined to cross-border labour mobility and social security coordination, limiting its capacity to address systemic rights violations affecting migrant and non-standard workers within national territories. Extending

the ELA's mandate beyond (intra EU) cross-border mobility would respond directly to the enforcement gaps that migrants face. Just as the EPSR Action Plan provides the bureaucratic context and forum for policy coordination, the ELA can potentially serve as a key institutional enforcement actor of the EU social acquis.⁴⁸

In addition, survey respondents underlined the need to **increase trade union presence in the workplace** (S03b, S04, S10), and where migrant workers are also dependent on their employer for accommodation, to extend the mandate to also control accommodation (S10). Labour inspectorates face specific difficulties when dealing with migrant workers, especially due to language barriers that complicate interviews and the dissemination of rights information. Labour inspectorates are encouraged to use interpreters and multilingual materials to address language barriers,⁴⁹ while FRA advises inspectors to proactively overcome communication obstacles by using cultural mediators, interpreters, translated questionnaires, and remote translation tools, rather than relying on employers.⁵⁰ Additional challenges include the concentration of migrants in hard-to-inspect sectors such as agriculture, construction, and domestic work, where short contracts and dispersed workplaces make proactive controls difficult.⁵¹ Under ILO Convention No. 81 (Labour Inspection Convention, 1947), ratifying states are obliged to maintain a sufficient number of labour inspectors to ensure the effective enforcement of labour standards, including those relating

46 European Commission. (2025). Proposal for a Regulation of the European Parliament and of the Council Establishing a Common System for The Return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, COM/2025/101 final, 11 March 2025.

47 PICUM. (2025). *Over 200 organisations: Inhumane deportation rules should be rejected. Platform for International Cooperation on Undocumented Migrants* (11 March 2025).

48 Countouris, N. (2024), n. 12.

49 International Labour Organization (ILO). (2022). *Guidelines: General principles of labour inspection*, Geneva.

50 FRA. (2024). *How workplace inspectors can protect third-country workers' rights: Training manual*.

51 FRA (2019), n. 36.

to occupational safety and health. In practice, however, inspection capacity in Europe has frequently fallen short of this standard. A 2013 mapping report of labour inspection services in 15 European countries found that most inspectorates were understaffed and therefore unable to monitor or enforce labour standards effectively.⁵²

Solutions that address more structural deficiencies in the current employment and social policy model and impact all workers not just migrant workers were identified, including the need to **ban excessive subcontracting** (S04) and **introduce stronger EU-level rules on subcontracting chains and joint and several liability** (S14), **regulation of labour intermediaries** (S10) and, **promote direct employment** (S03). Migrant workers face heightened vulnerability within subcontracting chains, as they are often more exposed to exploitative practices, including fraudulent posting, breaches of labour rights, insecure working conditions, and the irregular or absent payment of wages and social contributions when reliant on labour intermediaries and multi-layered subcontracting arrangements.⁵³ At the same time, enforcement is particularly challenging, with their numerous tiers of subcontractors and intermediaries, complicating oversight accountability. This fragmentation can obscure employer responsibility and significantly undermines the effectiveness of regulatory mechanisms.

Strengthening social dialogue between migrant-led organisations and trade unions (S01, S11, S14) was also highlighted as a crucial part of the response to improving enforcement of labour rights. However, this may also be hindered by entrenched barriers that go beyond logistical difficulties and reflect structural, institutional, and cultural inequalities. Debono affirms that migrants' unionisation rates remain consistently lower than those of native-born workers due to their concentration in precarious, low-union-density sectors, shaped by labour market segregation and short durations of stay.⁵⁴ Additional obstacles include linguistic and cultural barriers, limited knowledge of rights, and distrust toward unions, compounded by restrictive legal frameworks that reproduce dependency. Prior experiences with weak or politicised trade unionism, together with persistent stereotypes and discrimination within workplaces and union structures, further constrain migrant participation and solidarity.

These barriers (and their solutions) do not operate in isolation but reinforce one another. Workers with limited linguistic skills are less likely to access information campaigns or institutional resources, and those with little awareness of their rights are less likely to recognise when those rights are being violated, leaving them reliant on employers or intermediaries.

52 European Federation of Public Service Unions & Syndex. (2012). *A mapping report on Labour Inspection Services in 15 European countries* (Update March 2013).

53 Borelli, S. (2024). *Labour intermediaries and labour migration in the EU – A framing puzzle to rule the market (and avoid the market of rules)*. Friedrich Ebert Stiftung.

54 Debono, M. (2023). 'Trade unions and the protection of migrant workers in Europe: barriers, approaches and interventions' e-Revista Internacional de la Protección Social 8, 92.

Promising Enforcement Practices: Limiting Subcontracting Chains

Subcontracting is resorted to for a variety of reasons, including the need to access expertise and know-how beyond a firm's core competencies, to address labour shortages, or to enhance efficiency.⁵⁵ Subcontracting chains also function as conduits through which economic risks are displaced by reducing costs and increasing flexibility.⁵⁶ The pressures of competitive tendering are often transferred to its lower end, precisely where recruiters, posting companies, and labour market intermediaries are concentrated.⁵⁷ Such risk externalisation, though economically attractive for lead firms, from a labour law standpoint complicates the enforcement of labour standards.⁵⁸

Firms situated in the lower tiers of subcontracting chains are often in a more precarious economic position than those at the higher end.⁵⁹ Subcontracting is frequently associated with adverse effects on working conditions, disproportionately borne by the most vulnerable workers, such as migrant workers⁶⁰ as they are often reluctant to assert their rights, fearing that any challenge to employer practices might result in dismissal and subsequent difficulty in securing new employment,⁶¹ and reinforces their precarity when tied visas increases their dependence on the employer dissuading them from seeking redress against unlawful or exploitative practices.⁶²

Policy responses at EU level have thus far relied predominantly on ex post enforcement, including labour inspections, sanctions, and judicial remedies. While such mechanisms remain essential, their capacity to redress the structural drivers of abusive subcontracting appears, however, limited.⁶³ Some EU Member States have begun to complement reactive enforcement with preventive structural reforms aimed at reshaping subcontracting practices.⁶⁴ The ongoing EU debate, driven by EFFAT's Model Directive⁶⁵ and a European Parliament Resolution, marks momentum toward an EU initiative to limit subcontracting chains and impose upstream responsibility. The model directive proposes banning subcontracting of core activities, limiting chains to two tiers, and introducing full lead-firm liability alongside EU-wide licensing and registration of all labour intermediaries. In March 2025, the European Parliament endorsed this initiative (2025/2133(INI)), now under the EMPL Committee with IMCO opinion; committee vote is due December 2025, with plenary adoption expected in January 2026.⁶⁶

55 Cremers, J. (2011). In search of cheap labour in Europe: Working and living conditions of posted workers (CLR Studies 6, 2011), p. 177.

56 Andriescu, M., Buckingham, S., Broughton, A., De Wispelaere, F., De Smedt, L., Gascon, O., Ongono Pomme, A., Voss, E., Vitols, K., *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Publications Office of the European Union.

57 European Labour Authority. (2025). Posting of third-country nationals: Contracting chains, recruitment patterns, and enforcement issues. Insights from case studies. Luxembourg: Publications Office of the European Union.

58 Ibid. See also: Lillie, N., & Wager, I. (2015). 'Subcontracting, insecurity and posted work: evidence from construction, meat processing and ship building', in Drahokoupil, J., (ed). The outsourcing challenge: organizing workers across fragmented production networks, ETUI.

59 European Labour Authority. (2025), n. 56.

60 Borelli, S., Loffredo, A., Marzo, C., & Walser, M. (2025). *Sorry we subcontracted you. ETUI Report 2025.02. ETUI.*

61 Ibid. p.110.

62 Ibid.

63 Borelli. (2024), n. 53.

64 Examples include Germany's Arbeitsschutzkontrollgesetz (2021); Spain's Real Decreto-ley 32/2021; the Netherlands' Wet aanpak schijnconstructies; Belgium's sectoral "check-in-at-work" and anti-fraud package; and Romania's OUG 33/2021 on cross-border recruitment.

65 EFFAT. (2023). Policy briefing: Proposal for an EU Directive on labour intermediaries and fair working conditions across subcontracting chains. European Federation of Food, Agriculture and Tourism Trade Unions; EFFAT. (2025). *Model Directive on Subcontracting and Labour Intermediaries. European Federation of Food, Agriculture and Tourism Trade Unions.*

66 European Parliament. (2025). *Addressing subcontracting chains and the role of intermediaries in order to protect workers' rights* (2025/2133(INI)); European Parliament. (2025). *Draft report on addressing subcontracting chains and the role of intermediaries in order to protect workers' rights* (2025/2133(INI)), Committee on Employment and Social Affairs, Rapporteur: Johan Danielsson (PE775.631v01-00).

2.2 Case study: Labour migration in Italy: Promises and pitfalls of the Decreto Flussi

In Italy, the Decreto Flussi constitutes the principal mechanism for the admission of third-country nationals for both seasonal and non-seasonal employment. Established under the Legislative Decree of 25 July 1998⁶⁷, the framework formally guarantees equal treatment between migrant and national workers in relation to wages, working conditions, occupational safety, and social protection through collective agreements.

At the same time, a range of studies and monitoring reports suggest that the practical operation of the scheme is less straightforward. At each stage of the admission mechanism, outcomes appear divergent from the system's formal objectives, resulting in significant attrition and uncertainty. The process often leaves workers and employers navigating delays and administrative complexities, raising questions about the effectiveness of the Italian labour migration schemes in achieving labour market, economic and rights-based policy goals. Drawing on the systematic monitoring efforts of *Ero Straniero* and its *Rapporto Flussi*, complemented by recent literature and qualitative interviews, this section examines the Decreto Flussi as a case study of labour migration.

Quota setting and application pressures

Employers initiate the process on designated click days by submitting applications through an online portal. The applications are then

matched against the annual quota established by the Government. The intention is to regulate entry in line with economic needs.

In practice, applications far exceed the available quotas. In 2023, more than 609,000 applications were submitted against 131,850 quotas, and in 2024 the figure rose to over 717,000 applications for 146,850 quotas.⁶⁸ This imbalance, ranging from five to six applications per available quota, produces an immediate filtering effect, leaving a majority of employers and workers outside the formal channel. The click day system favours those who can pay intermediaries or cooperatives with fast internet access.⁶⁹ Civil society notes this effectively excludes applicants abroad and privileges workers already in Italy or those with personal connections.⁷⁰ The click day privileges those who can pay agencies or cooperatives to submit applications, while others are excluded. For many abroad, intermediaries are the only way to gain entry, reinforcing dependency and exploitation. As a result, the *decreto flussi* operates less as a channel for new migration and more as a selective regularisation tool for those already present and sometimes irregularly employed in Italy.⁷¹

Authorisation procedures and administrative constraints

Once an employer's application is successful, the competent Single Immigration Desk (*Sportello Unico per l'Immigrazione*)⁷² issues a work authorisation (*nulla osta*)⁷³. This document certifies that the employment offer is valid and authorises the worker to apply for a visa at the

67 Legislative Decree of 25 July 1998, No. 286: Consolidated Act of provisions concerning the regulation of immigration and rules on the condition of foreigners.

68 *Ero Straniero*. (2024). I veri numeri del decreto flussi: Un sistema che continua a creare irregolarità (Rapporto Flussi 2024). Coordinamento a cura di Fabrizio Coresi. Milano: ActionAid, ASGI, A Buon Diritto, Oxfam, FCEI.

69 Interview with LaMiaParte, 2025.

70 Ibid.

71 Ibid.

72 The *Sportello Unico per l'Immigrazione* operates within each provincial Prefecture (Prefettura). It functions as a one-stop office coordinating all procedures related to the entry and employment of non-EU workers.

73 The *nulla osta al lavoro* (work authorisation) is a pre-entry document valid for six months from the date of issue. It allows the worker to request an entry visa for employment purposes. If the worker does not obtain the visa and sign the residence contract (*contratto di soggiorno*) within this period, the authorisation lapses automatically, and the employer must reapply under a subsequent decreto flussi quota.

Italian consulate in their country of origin. Due to the delay for the assessment of application, migrant workers could even work and regularly stay in Italy thanks to *nulla osta*, waiting to apply for or receive the residency permit. In principle, the number of *nulla osta* issued should correspond to the number of quotas allocated. The data show, however, that not all allocated quotas are converted into *nulla osta*. In 2023, only 74,445 *nulla osta* were granted, and in 2024 the figure was 83,570, representing approximately 56–57% of quotas.⁷⁴ Workers may spend months preparing or paying fees, only for the contract to collapse before it begins. Without finalisation within six months, the *nulla osta* expires and legal status collapses.

Consular processing and barriers to entry

With a valid *nulla osta*, the worker must apply for a visa at the Italian consulate in their country of origin. Once granted, the visa permits entry into Italy, where the employment relationship can formally begin. This stage is essential, as the visa links the administrative authorisation granted in Italy with the worker's legal admission at the border. A consistent pattern of attrition appears here as well. In 2023, only 37,790 visas were issued, just over half of the *nulla osta* granted, and in 2024 this fell to 24,151, or less than one-third.⁷⁵ In addition, thousands of workers who had obtained both *nulla osta* and visas had not entered Italy at the time of reporting: 11,013 in 2023 and 10,869 in 2024.⁷⁶

A fragmented process exacerbating a rights protection gap

Upon entry into Italy, migrant workers are required to sign a residence contract (*contratto di soggiorno*) at the Prefecture, thereby

formalising the employment relationship, and to submit an application for a residence permit. The residence contract is a formal agreement signed between migrant workers and their employer in Italy (within 8 days after the worker's entry). It must be submitted electronically to the immigration office (*Sportello Unico per l'Immigrazione*) and is part of the process to obtain a residence permit. Thus, upon entry, migrant workers must sign a residence contract (*contratto di soggiorno*) and apply for a residence permit within eight days. This stage should secure their legal and employment status, yet it has become the system's main point of failure.

Evidence, however, reveals that this is the stage at which the system experiences its most acute attrition. In 2023, out of 127,707 quotas allocated, only 16,188 culminated in an application for a residence permit (13%), with a mere 9,528 permits ultimately issued (7.5%). The following year the picture did not improve only 9,331 applications were registered, representing 7.8% of the original quota.⁷⁷ Thousands of workers who have already obtained both a *nulla osta* (work authorisation) and an entry visa remain waiting to be called by the Prefecture's Single Immigration Desk (*Sportello Unico per l'Immigrazione*) to sign their residence contract (*contratto di soggiorno*) and apply for a residence permit. This stage, which should take place within eight days of arrival, often stretches for months due to severe administrative backlogs, understaffed offices, and poor coordination between the Interior Ministry, consulates, and local immigration desks. According to the *Rapporto Flussi* (2024), by early 2024 more than 38,000 people were stuck in this limbo despite having complied

74 Ero Straniero. (2024). I veri numeri del decreto flussi: Un sistema che continua a creare irregolarità (Rapporto Flussi 2024). Coordinamento a cura di Fabrizio Coresi. Milano: ActionAid, ASGI, A Buon Diritto, Oxfam, FCEI.

75 Ibid.

76 Ibid.

77 Ibid.

with all legal requirements. During this waiting period, workers may start working on the basis of the *nulla osta* alone, but their employment and residence status remain formally unfinalised.⁷⁸

The *Decreto Flussi* is formally intended to promote regular migration, yet in practice it functions poorly. Many workers entering through this channel are already in Italy, often working irregularly, while employers tend to prefer people they already know or relatives of current employees.⁷⁹ Access to the system is also deeply unequal. The click day system favours those who can afford intermediaries, excluding others and fostering exploitation. In practice, the *Decreto Flussi* serves less as a pathway for new migration than as a selective regularisation tool for those already in Italy, undermining its aim of transparent access to regular work.⁸⁰

Empirical evidence collected for this study demonstrates that the Italian migration governance framework itself produces structural pathways into irregularity. Many migrants arrive legally with a visa or *nulla osta* but never meet the employer, sometimes due to fraud, sometimes abandonment – or, in the worst case scenario, due to trafficking in human beings for labour exploitation. Residence permits are rigidly tied to employment, meaning that job loss almost always leads to loss of status, with no effective “job-seeker” bridge. This dependency between work and residence status keeps migrants in a constant state of insecurity: losing a job may mean losing the right to stay, and employers are fully aware of this leverage.⁸¹

Institutional fragmentation and lack of coordination between consulates, prefectures, and central ministries compounds these vulnerabilities, producing delays, missed deadlines, and inconsistent administrative practice.⁸² Bureaucratic bottlenecks also play a role, permit renewals can take months or even more than a year and although receipts are legally valid, many employers or their labour consultants refuse to extend contracts for workers awaiting renewal, deepening legal uncertainty.⁸³

The same structural features that precipitate irregular status also facilitate systematic degradation of working conditions. Because employers hold the power to sign renewals, they can leverage permits to demand longer hours, lower pay, or undeclared work. Many workers, especially seasonal newcomers, lack knowledge of labour rights and struggle to contest violations,⁸⁴ while those with longer-term permits often tolerate poor conditions to maintain family reunification eligibility. Weak labour inspection capacity leaves violations unchecked, particularly in remote rural sites.⁸⁵ At the same time, an entrenched “migration industry” of brokers and agencies charges fees, fabricates offers, and mediates access to jobs, trapping workers in cycles of debt and dependency.⁸⁶ Migrants’ mistrust in unions and institutions, combined with fear of employer retaliation or being reported to immigration authorities, further silences complaints, entrenching a system that does not protect migrants but instead locks them into precarity, irregularity, and structural exploitation.⁸⁷

78 Ibid.

79 Interview with LaMiaParte, 2025.

80 Ibid.

81 Ibid.

82 Interview with ARCI, 2025.

83 Interview with LaMiaParte, 2025.

84 Ibid. Interview with ARCI, 2025.

85 Interview with ARCI, 2025.

86 Ibid.

87 Interview with LaMiaParte, 2025.

2.3 The role of the Pillar

The findings of this study reveal that there are **five key Pillar principles** that are strongly linked to the rights protection gap (regular and irregular) migrant workers encounter when working in European Member States. The rights protection gap implies that migrant workers are not granted their rights and entitlements as foreseen by the Pillar and as such, it will be essential for the current barriers to be taken into account when developing the next ESPR Action Plan. Crucially, it is necessary for any policy initiatives to consider the extent to which the Pillar principles are interconnected and will require a comprehensive response if they are to be effective in practice.

Principle 3

Equal opportunities: discrimination on the basis of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public

► Inclusion and equal treatment of migrant workers

Underscoring all of these issues is the lack of equal opportunities for migrant workers. Not only do migrant workers face discrimination on the basis of their gender and/or racial or ethnic origin but also restrictions and conditionality according to their migration status significantly impacts on their equal treatment regarding employment and social protection, as provided for under Principle 3. The exclusion of migrant workers must be limited by guaranteeing equal treatment and ensuring that where equal treatment is not provided can be contested before the courts through strategic litigation.

Principle 5

Secure employment including fair and equal treatment regarding working conditions, access to social protection and training, prevention of precarious working conditions and abuse of atypical contracts

► Safe reporting mechanisms

The most serious concern emerging from the empirical data is the precarity and instability that migrant workers face. Beyond the restrictive migration regimes that often tied their right to residence with their employment, migrant workers continue to experience precarious and abusive working conditions, that stems from their lack of trust in authorities and fear of retaliation or deportation should they seek to complain or report their employer. The fear of migrant workers must be tackled by establishing a firewall between labour inspectorates and other public service providers, and immigration authorities. Safe reporting of complaints must be made possible by protecting workers from retaliation and adverse treatment. Guidelines on the implementation of the Employer Sanctions' Directive would facilitate the development of such safe reporting mechanisms.

► Reinforce mandate and capacity of labour inspectorates

For many migrant workers secure and fair employment remains unrealised due to weak and uneven enforcement. Evidence points to persistent gaps in inspection coverage, limited sanctions, and barriers such as language and fear of retaliation that deter complaints. Although the enforcement of labour law primarily falls within national competence, the European Commission plays a crucial coordinating and guiding role in promoting effective and rights-

based enforcement of EU labour law for all workers. Member States should be supported in reinforcing their labour inspectorates so that they are adequately equipped institutionally, financially, and technically to ensure effective and inclusive enforcement for all workers, irrespective of migration status. Capacity building activities on labour inspection practices and interviews with migrant workers should be mainstreamed across national labour enforcement systems and integrated into national capacity-building programmes.

► **Expand role of ELA to facilitate cross-border cooperation**

Although its mandate does not formally extend to the labour migration acquis, the European Labour Authority should be viewed as the strategic operational arm within the (social) EU–national labour administration axis.⁸⁸ The increasing presence of migrant posted workers highlights the growing importance of the interface between the EU internal-market framework (including posting rules) and the EU labour-migration acquis. Against this background, there is a strong rationale for allowing ELA's mandate to evolve so as to encompass those instruments that are pivotal to safeguarding migrant workers' rights, notably the Seasonal Workers Directive (2014/36/EU), the Employers' Sanctions Directive (2009/52/EC) and the Anti-Trafficking Directive (2011/36/EU). Enhancing ELA's capacity to request information, initiate investigations, and apply dissuasive sanctions, together with Member States and social partners, would further strengthen its ability to support national authorities in ensuring effective protection for all workers in cross-border situations.

⁸⁸ Countouris, N. (2024), n. 12.

**Principle
7**

Information about employment conditions and protection in case of dismissals

► **Improve provision of information and increase awareness of rights**

Precarity and insecurity also stems from the significant dependence that migrant workers have on their employers, who act with near impunity as to the extent to which abusive working conditions are not tackled by authorities. The reduction of migrant workers dependence on employer is an essential step towards guaranteeing their rights, however, a significant barrier is migrant workers' complete lack of awareness or knowledge of their rights stemming from a lack of information. Targeted and accessible information campaigns must address language barriers by providing multi-lingual information, migrant workers must be given access to training and language courses that include information on their rights and entitlements and frontline service providers should be able to provide migrant workers with information on their residence conditions and their labour rights and entitlements.

**Principle
10**

Healthy, safe and well-adapted work environment and data protection

► **Recognise increased OSH risk for migrant workers**

Migrant workers, particularly those in precarious or irregular situations, face disproportionate occupational safety and health (OSH) risks. They are overrepresented in high-risk sectors such as agriculture, construction, and domestic care, and encounter additional challenges compared to local workers, including language barriers, limited access to training, and fear of

reprisals or deportation, which often prevent them from reporting unsafe conditions. The migratory process itself can also constitute a psychosocial risk factor. A major gap in the EU's OSH acquis remains the exclusion of domestic workers from the scope of the OSH Framework Directive (89/391/EEC) a sector heavily reliant on migrant labour, including many in irregular situations. The ESPR Action Plan should therefore recognise the specific OSH risks faced by migrant workers, ensure their systematic monitoring, expand EU-OSHA data collection to include migrant-sensitive indicators, and foresee a revision of Directive 89/391/EEC to explicitly extend its coverage to domestic workers.

3 Closing the Justice Gap: Legal and practical barriers to fair and just working conditions

The ability to access justice stands at the heart of any system that claims to uphold the rule of law and human rights.⁸⁹ It is through effective access to justice that abstract legal norms are transformed into lived realities, ensuring that the protection of rights extends to all, including those most at risk of exclusion. Securing effective access to justice continues to resonate in (the still underdeveloped) contemporary debates about migrant workers' rights. Access to justice, understood as the ability to claim, enforce, and obtain remedies (and compensation) for one's rights (violations), is a cornerstone of the rule of law and a precondition for fair and just working conditions. Yet, for many migrant workers, particularly those in precarious or irregular situations, this ideal remains out of reach. Rights proclaimed in legislation often fail to translate into rights enforcement, creating what Marsden terms "paper rights without teeth."⁹⁰

The concept of a **justice gap** captures the divide between rights as they are formally declared in law and the lack of operationalisation in practice.⁹¹ For migrant workers, this gap is sustained by intersecting legal, institutional, and socio-economic barriers.⁹² **Access to justice** implies equality of arms between workers and employers, but also trust in public institutions,

cultural and linguistic accessibility, and protection from retaliation. When these enabling conditions are absent, access to justice proves to be difficult. The justice gap is not merely a technical or procedural deficit, it also reflects the structural disadvantages embedded in migration regimes. Even when formal equality is guaranteed, migrant workers often face stigma, stereotyping, and structural inequalities that weaken their bargaining power and prevent participation.⁹³

For **migrant workers with irregular status**, access to justice is obstructed at its very foundation. Although most legal systems formally guarantee basic labour rights to all workers, migrants in an irregular situation face a combination of knowledge gaps, socio-economic barriers, structural dependency on employers, and fear of state authorities. The constant risk of deportation or detention discourages them from reporting abuses, effectively trapping them in exploitative situations.⁹⁴ When labour inspection overlaps with immigration enforcement, complaint mechanisms appear unsafe, and workers often avoid seeking help or are removed from the country before remedies can be pursued. Even strong laws are undermined by the

89 Cappelletti, M., & Garth, B. (1978). 'Access to justice: The newest wave in the worldwide movement to make rights effective' *Buffalo Law Review* 27(2), 181–292.

90 Marsden, S. (2019). 'Migrant workers, rights, and the rule of law: responding to the justice gap' *Dalhousie Law Journal* 42, 153.

91 Ibid.

92 Rasnača, Z. (2022). 'Enforcing migrant and mobile workers' rights'. In Z. Rasnača, A. Koukiadaki, N. Bruun, & K. Lörcher (Eds.), *Effective enforcement of EU labour law* (Hart Publishing, 2022), pp. 265–290.

93 Ibid.

94 PICUM. (2020). *A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Rights*.

structural realities that prevent their effective implementation.⁹⁵ Herein, Italy's sophisticated legal framework to combat labour exploitation, though aligned with European and international standards, conceals a persistent enforcement deficit. Institutional fragmentation, inadequate victim identification, and the pervasive fear of reprisal or expulsion among migrant workers ultimately transform (even) strong laws into *weak protection* in practice.⁹⁶

Even **migrant workers with regular status** face major barriers to justice. Many of these obstacles are embedded by design within migration systems themselves. Short-term, employer-specific permits restrict mobility and make it risky to report abuse, as job loss can immediately threaten residence status. Evidence shows that temporary and seasonal workers in sectors such as agriculture, construction, and care experience widespread wage theft and safety violations that often go unreported due to fear of dismissal or non-renewal of contracts.⁹⁷

In what follows, the importance of access to justice is underlined by the survey results that show that **labour rights without remedies are fragile**; they remain promises on paper while violation or even exploitation persist in practice. What the evidence reveals is not a scattering of isolated breaches but a consistent landscape of violations that shape the everyday experiences of migrant workers. It is within this reality that the justice gap becomes visible: where there is no credible path to redress, violations are repeated, normalised, and embedded in the very functioning of certain labour markets.

The most common violation reported by respondents is **wage abuse**. Under-payment through illegal deductions, excessive unpaid overtime, and the outright non-payment or delayed payment of wages emerged as recurring themes across nearly all responses.⁹⁸

"The most common reason migrant workers seek remedy is non-payment or delayed payment of wages. Wage theft remains widespread, especially among temporary, seasonal, and irregular workers who are often exploited and hesitant to report abuses." (S02)

Discrimination and unfair treatment constitute a second cluster of violations. Respondents reported unequal treatment in wages, working hours, and conditions (S01, S04, S05, S06, S08, S11, S12), and in some cases incidents of harassment and sexual violence (S13). These abuses were described as intensified in feminised sectors such as domestic and care work, where migrant status, gender, and origin intersect to produce compounded vulnerabilities.

"Many live-in carers work extremely long hours without proper rest periods. Their time is frequently not counted or paid when they are on-call, and they may lack any privacy, rest, or guaranteed days off. Tasks often go far beyond care into housework, cooking, and cleaning, with no safeguards, and often no contract. For migrant women in care work, the situation is aggravated by harassment risks and exclusion from formal protections when working in domestic or informal arrangements." (S11)

95 Cavanna, P. (2018). Forced Labour and Other Forms of Labour Exploitation in the Italian Agri-Food Sector: Strong Laws, Weak Protection for Migrant Workers' in Borraccetti, M. (eds) *Labour Migration in Europe Volume II* (Palgrave Pivot, 2018).

96 Ibid.

97 FRA (2019), n. 34.

98 S01, S02, S03B, S04, S06, S07, S08, S10, S11, S12, S13, S14.

Occupational safety and health concerns

such as unsafe working conditions (S08, S12), the absence of adequate training, and frequent workplace accidents (S01, S02, S06, S10, S11, S14). These concerns illustrate how migrant workers are often allocated to the most hazardous roles, while subcontracting chains obscure responsibility and language barriers prevent meaningful prevention and reporting.

Other recurring grounds for seeking remedy include unfair dismissal (S02, S05, S06, S08, S12, S14), exclusion from social security systems (S06, S11, S12), and denial of statutory leave and rest periods (S01, S13).

Coercive practices, including the withholding of passports and identity documents, were also identified:

“In our experience, employers sometimes keep workers’ passports or documents, which makes them dependent and prevents them from leaving or seeking other employment.” (S02)

In certain contexts, exploitative working conditions were linked to substandard and segregated living arrangements:

“Informal living conditions without access to basic services aggravate vulnerability and hinder social and labour integration.” (S13)

3.1 Legal remedies and complaint mechanisms

Access to justice is a fundamental right guaranteed to all workers, including migrants, irrespective of status.⁹⁹ Migrant workers must be able to bring claims where their labour rights are violated and obtain access to justice through appropriate remediation mechanisms that can be divided into two broad categories:

Judicial Mechanisms	Non-Judicial Mechanisms
Labour courts, civil courts, and in some cases criminal courts to pursue claims relating to wages, ranging from wage recovery and unfair dismissal to discrimination, infringements of occupational safety and health (OSH) standards, and, at the most severe end, cases of labour exploitation and abuse.	Alternative avenues of redress without full court proceedings: <ul style="list-style-type: none">▶ Labour inspectorates, which can investigate and sanction non-compliance.▶ Mediation and conciliation mechanisms, often provided through employer-level or state-supported bodies.▶ Collective enforcement through trade unions and joint funds, which can represent individual workers and provide dispute settlement fora.

The remainder of the section presents how these remediation mechanisms function in practice based on survey findings.

“Migrant workers, including undocumented workers, have rights as workers to legal remedy – either through labour tribunals, civil courts, criminal courts etc, and labour inspectorates have a key role in enforcing these rights. The problem with accessing them is that political priorities (particularly around deportation and anti-migrant sentiment) take priority, so these mechanisms are practically unavailable even though the legal right is there.” (S01)

⁹⁹ Article 47, Charter of Fundamental Rights of the European Union; Article 13, European Convention on Human Rights.

Legal aid is a crucial enabling measure. EU legislation establishes minimum standards for legal aid in cross-border disputes,¹⁰⁰ while national systems extend (or restrict) access domestically. However, for migrant workers, especially those in an irregular situation, access to legal aid remains limited in practice.¹⁰¹

Respondents indicated that migrant workers should **in theory** have access to legal aid under the same conditions as nationals, for example subject to income thresholds and the type of case (S02, S03b, S11, S12, S13, S14). Several respondents noted, however, that legal aid entitlements vary considerably between Member States, reflecting national diversity in the design and funding of legal assistance systems (S01, S03b, S04). Importantly, access to legal aid is often conditioned on residence status. As highlighted by respondents, additional eligibility criteria tied to migration status make legal aid effectively inaccessible to third-country workers in an irregular situation (S03b, S11, S14).

Even where legal aid is formally available, a range of **practical barriers** prevent migrant workers from benefiting in practice. These include lack of information and awareness about entitlements, language obstacles that hinder communication and understanding of procedures, low levels of trust in authorities, and fear of retaliation if legal action is pursued (S02, S11, S12, S13). In this context, many migrant workers require the support of trade unions or NGOs to access legal aid (S13). Yet, these organisations themselves often lack the human and financial resources necessary to meet demand and provide consistent support (S14).

Where civil society organisations can offer *pro bono* services, access is further limited by their geographic reach and the fact that many migrant workers are unaware that such services exist (S02). The survey findings confirm that, in practice, civil society organisations step in to fill gaps left by state systems, and their interventions often represent the only form of meaningful assistance (S11). A respondent, speaking from the perspective of an organisation directly engaged in advocacy and support, stressed that targeted services for migrants are essential:

"[name of organisation] advocates for ensuring that all migrant workers, including the undocumented, have access to legal aid and support services tailored to their needs. This includes providing information about their rights, access to complaint mechanisms, and support in lodging complaints, regardless of their immigration status. [name of organisation] emphasizes the importance of facilitating trade unions and NGOs in supporting migrants to have access to workers and assisting them in lodging complaints, including access to residence status, information, and legal representation." (S12)

However, despite the procedural safeguards aimed at the protection of rights in law and policy, in most cases, regardless of migration status, **migrant workers continue to face serious obstacles** in exercising their access to justice:

- Language barriers, both in terms of lack of interpreters during proceedings (S13) and insufficient translation services (S14)

¹⁰⁰ Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

¹⁰¹ FRA. (2011). *Access to justice in Europe: An overview of challenges and opportunities*.

- ▶ Difficulties in understanding complex procedures (S01, S02, S04, S08, S09, S11).
- ▶ Fear of retaliation, whether from employers or from immigration authorities (S01, S02, S04, S08, S09, S10, S11, S12, S13, S14)
- ▶ Workers' lack of awareness of their rights (S02, S03b, S04, S05, S06, S08, S09, S10, S11, S12, S13, S14),
- ▶ Reduced ability to challenge abuse due to employer dependency and power imbalance (S02, S03b, S05, S12).
- ▶ Widespread lack of trust in authorities (S02, S06, S10, S13),
- ▶ Experiences of discrimination further discouraged workers from pursuing complaints (S07, S08).

In addition to these fundamental barriers, respondents drew attention to more **structural constraints** that further limit the accessibility of remedies. The cost of proceedings was repeatedly mentioned as a deterrent (S01, S03b, S07, S10, S14), as was the duration of processes, which were described as excessively lengthy and discouraging for workers with limited resources and urgent needs (S08, S10, S13, S14). Even when complaints were

lodged and judgments obtained, respondents noted the frequent lack of capacity to enforce decisions in practice (S10, S14).

“Based on our research, there is limited mandate of labour inspectorates to address complaints and labour inspectors do not always have power to enforce decisions against non-compliant employers.” (S10)

Given this combination of obstacles, the survey indicates that **access to justice in practice often depends on the intervention of third parties**. Migrant workers are frequently reliant on representation and assistance from trade unions or NGOs to overcome barriers in navigating complaint procedures (S02, S10, S11).

“In practice, migrant workers often rely on CSOs and social service providers for legal counselling, safe reporting channels, and support in navigating complaints procedures. This underscores the need for multilingual, accessible, and status-neutral mechanisms that migrants can safely trust.” (S11)

Promising Practices in Guaranteeing Access to Justice

- ▶ **Firewalls between labour inspection and immigration enforcement.** In several Spanish regions, agreements between labour inspectorates and local authorities prevent the exchange of information with immigration enforcement when irregular workers lodge complaints, which has increased reports of wage theft and unsafe working conditions (S02). In France, labour inspectors are not required to report irregular migrant workers to migration authorities (S10). At the EU level, advocacy for the broader adoption of such firewalls has also been highlighted (S12).
- ▶ **Portability schemes.** In Italy, a scheme facilitates the portability of social security and employment-related benefits, enabling migrant workers to retain accrued rights when changing employers or sectors (S02).

- **Joint liability mechanisms.** Belgian law provides for joint liability between contractors and subcontractors (S02), while similar mechanisms exist in Spain and Italy, particularly in the construction sector (S14). These are complemented in some cases by wage guarantee funds, for example, the Danish Fund for Posted Workers which help ensure payment of wages in cases of insolvency or exploitation (S14).
- **Regularisation pathways linked to labour inspections.** Portugal has introduced mechanisms enabling certain categories of workers to regularise their status (S02). In Spain, labour inspectorates can facilitate residence and work permits for irregular workers if investigations find evidence of at least six months of employment (S05, S13). As noted, “the fact that people in an irregular administrative situation can access a residence and work permit, because they have been victims of human trafficking or have worked for six months irregularly, is a form of compensation for the lack of vigilance of the authorities, who have allowed the exploitation and violation of their rights” (S05).
- **Specialised labour prosecutors in Belgium** are considered to be an effective institutional practice that ensures cases of labour exploitation are properly investigated and prosecuted (S07).
- **Awareness-raising and accompaniment initiatives** as essential complementary tools. In Czechia, Diakonie ČCE - ECCB (specifically Diakonie Západ in partnership with IOM Czech Republic) provides social counselling and outreach activities in the Pilsen region to inform refugees particularly Ukrainians under Temporary Protection about labour rights and procedures in cases of exploitation (S11). Similarly, in Spain, diocesan churches in Ciudad Real, Huelva, and La Rioja have developed accompaniment for seasonal agricultural workers, guiding victims of serious labour rights violations through complaint and support mechanisms (S13).

Over the past decade, the EU has developed a legal framework granting important labour rights to workers, including migrants in a regular and regular situation. However, a persistent gap between rights on paper and enforcement in practice undermines these protections and the ability of migrant worker to claim their rights.¹⁰² Enabling effective access to justice for migrant workers requires a fundamental re-engineering of both enforcement architecture and the enabling environment for safe reporting of complaints.

One strand of innovation lies in creating low-threshold, worker-centred tools that reduce barriers to entry.

“Innovative approaches, such as multi-lingual digital reporting platforms, mobile outreach units, and partnerships with trade unions and NGOs, can increase accessibility, provide real-time guidance, and empower workers to safely assert their rights.” (S12)

¹⁰² PICUM. (2022). *Labour Rights of Undocumented Migrant Workers: what does the EU say?* (6 June 2022).

These proposals echo recent pilot initiatives across Europe that have experimented with status-neutral hotlines, app-based grievance reporting, and mobile inspectorate teams, all designed to circumvent geographical and linguistic obstacles.¹⁰³

At the institutional level, a recurring theme is the need to **insulate labour inspection from migration control**. Current practice in several Member States undermines trust, as inspection is perceived by migrants primarily as an arm of immigration enforcement rather than as a guarantor of workplace safety and rights.

“One crucial step is implementing ‘firewall’ policies that prevent labour inspectors from sharing information with immigration authorities. Such policies would create a safe space for undocumented workers to report abuses without fearing deportation.”
(S02)

Many respondents (S01, S02, S08, S10, S11, S12, S13, S14) emphasised how the introduction of firewall policies between labour inspectorates and immigration authorities, can enable labour inspectors to fulfil their primary function rather than acting as auxiliary immigration enforcement.¹⁰⁴ Although no EU directive explicitly mandates firewalls, their rationale is implicit in provisions that guarantee complaint mechanisms accessible directly or through third parties, regardless of status. These minimum requirements can be further

enhanced by guaranteeing for anonymity and confidentiality (S02, S10).

Additional proposals in relation to **accessible and efficient procedures** (S06, S08, S12)) included expanding free or subsidised, tailored legal aid services (S02, S08), and language and cultural mediation. For the latter, respondents proposed multilingual forms and training for staff (S03b), as well as the integration of interpreters, intercultural mediators, or social workers into enforcement and remediation structures to improve communication, build trust and facilitate early intervention in workplace irregularities (S13). Other practical procedural improvements suggested by participants (S02, S14) included for fast-track procedures for wage recovery and enforcement, enabling swift resolution of low-value claims.¹⁰⁵

Equally important is **stability and certainty of residence during proceedings**. Several respondents (S03b, S08, S12) advocated granting temporary residence status to allow workers to collaborate with authorities safely during the complaint process, and one linked this to enhancing visibility and recognition of victims of trafficking (S05). This logic is consistent with existing EU law, notably Directive 2004/81/EC on residence permits for victims of trafficking or smuggling who cooperate with authorities¹⁰⁶ and Directive 2011/36/EU on preventing and combating trafficking in human beings,¹⁰⁷ both of which provide residence and protection for victims of trafficking who assist in investigations or

¹⁰³ FRA. (2019), n. 34.

¹⁰⁴ ELA. (2024). Platform subgroup on safe reporting and complaint mechanisms for workers to denounce abuse and seek support Output paper March 2024; PICUM. (2020), n. 94.

¹⁰⁵ Wintermayr, I., & Weatherburn, A. (2021). *Improving access to protection and remedy for victims of human trafficking in Belgium and the Netherlands*, ILO Technical Report, April 2021.

¹⁰⁶ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

¹⁰⁷ 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.

proceedings. Extending such safeguards to cases of severe labour exploitation where workers face comparable risks of coercion, retaliation, or deportation would operationalise the fundamental principle that deportability should not outweigh access to justice. As it stands, Member States are currently only required to do so in the case of illegally residing migrants who experience particularly exploitative working conditions under Directive 2009/52/EU, but cases of labour exploitation in practice reveal that even migrants with a regular status can find themselves in situations of severe labour exploitation.¹⁰⁸

Several respondents (S02, S03b, S06) called for **strengthened capacity and mandate of labour inspection**, by permitting unannounced inspections and enforcing sanctions as soon as non-compliance is identified. Persistent weaknesses such as limited staffing, fragmented competences, and insufficient authority continue to undermine effective enforcement. Many inspectorates operate with inadequate resources, heavy administrative burdens, and dependence on complaint-based systems, leaving little capacity for proactive, risk-based inspections.¹⁰⁹ One survey respondent underlined the limits directly:

“[...] there is limited mandate of labour inspectorates to address complaints and labour inspectors do not always have power to enforce decisions against non-compliant employers.” (S10)

Finally, respondents underscored the importance of credible employer sanctions (S03b, S06). EU law already requires sanctions that are “effective, proportionate and dissuasive,” yet enforcement remains uneven and often symbolic. Research shows that coupling higher fines with ancillary measures such as exclusion from public procurement, suspension of operations, naming and shaming, or restitution orders raises the expected cost of exploitation above its perceived benefits. Unless sanction regimes are both credible and collectable, the social acquis risks degenerating into “paper tigers,” compelling in rhetoric but ineffectual in practice.¹¹⁰

3.2 Case study: Invisible but Indispensable: Migrant workers in an irregular situation in Belgium

Across the EU, migrants in an irregular situation constitute a systematically marginalised yet profoundly essential pillar of the European economy and society. According to the most recent findings there were between 2.6 and 3.2 million migrants in an irregular situation residing across twelve European countries during 2016–2023.¹¹¹ In Belgium, this represents around 112,000 people, or roughly 1% of the national population, with nearly half living in Brussels.¹¹² Behind these figures stand workers who, while contributing daily to Belgian society, continue to face the systematic denial of their most basic rights. CSC Brussels estimates that

108 Weatherburn, A., & Blanpain, E. (2025). ‘La Lutte contre l’exploitation économique en Belgique : leçons de l’affaire Borealis et des pistes de réforme pour une meilleure protection des travailleurs migrants’ Revue Belge de Sécurité Sociale, 4/66, 537-563

109 ILO. (2013). Labour inspection strategies for combatting undeclared work in Europe; Senior Labour Inspectors’ Committee (SLIC). (2015). Challenges faced by labour inspectorates relating to enforcement: Contribution to the ex-post evaluation of the OSH legislation. Brussels: European Commission, DG EMPL.

110 Ibid.

111 Kierans, D., & Vargas-Silva, C. (2024). *The irregular migrant population of Europe*. MIRREM Project: MirreM Working Papers.

112 Kierans, C., & Vargas-Silva, C. (2024). Irregular migration in Europe: Estimates and trends. MirreM Working Paper Series, No. 6. Oxford: University of Oxford / Migration Observatory. EMN Belgium. (2023). Annual report on migration and asylum 2022: Belgium. European Migration Network, Belgian National Contact Point.

regularising 100,000 migrant workers with an irregular status would add around €77 million every month to the national social security system,¹¹³ amounting to clear evidence that exclusion comes at a high social and economic cost.

Belgium's policy responses have, to date, been somewhat episodic and primarily reactive, with limited integration into a longer-term vision for labour market development and social protection. While various initiatives have been introduced over time, they have often taken the form of ad hoc measures rather than components of a forward-looking policy vision.

- **Early phase:** Aside from a limited initiative in 1974, Belgium relied almost exclusively on case-by-case regularisations until the late 1990s, granted only under exceptional circumstances under the Aliens Act.
- **1999–2000 “one-shot” campaign:** A landmark large-scale programme granted residence to around 40,000 people on grounds such as protracted asylum, humanitarian need, serious illness, or long-term residence, with an independent commission empowered to review negative decisions.
- **2009 ad hoc scheme:** In July 2009, ministerial instructions under Article 9bis introduced “sustainable local anchoring” and employment as criteria for regularisation, open only from September to December 2009. Applicants needed continuous

residence since March 2007 and, for the labour track, a valid job contract with regional approval. On 9 December 2009, however, the Council of State annulled the instructions, ruling that such substantive criteria could not be created by ministerial discretion but required an act of parliament.¹¹⁴

The limits of Belgium's *ad hoc* approach were starkly exposed during the 2021 Brussels hunger strike, when around 470 *sans papier* occupied churches and university halls for nearly two months demanding recognition and inclusion into society. The action generated widespread solidarity from civil society and trade unions and attracted significant national and international attention.¹¹⁵ Yet government concessions proved extremely limited. The strike concluded without the establishment of a structural pathway, and only a limited number of applicants ultimately obtained residence permits.

Sanctions for illegal employment and the possibility for workers to recover unpaid wages already existed under the Law of 30 April 1999, well before the adoption at EU level of the Employers Sanctions Directive (2009/52/EC). The Act of 11 February 2013 transposed the Directive in Belgium, by clarifying and strengthening this framework, introducing a more explicit employer duty to verify residence permit, joint and several liability for unpaid salary resting on principals and main and subcontractors, tightening administrative and criminal sanctions, and setting out clearer mechanisms for wage recovery and complaints.

¹¹³ Based on calculations carried out by CSC.

¹¹⁴ European Migration Network (n.d.). *Fact sheet – Regularisation of irregular immigrants in Belgium*.

¹¹⁵ Al Jazeera. (2021). *Why undocumented migrants went on hunger strike in Belgium*, 19 September 2021; Guardian News. (2021) *Migrants in Brussels end mass hunger strike for legal status after 60 days*, 22 July 2021.

Precarious labour, invisible workers

Migrant workers with irregular status often find themselves in situations where basic labour standards are not upheld and where their precarious residence status can limit their ability to assert their rights.

Evidence from this study points to recurring issues such as irregular or excessive working hours, insufficient rest periods, and gaps in access to fundamental employment protections.¹¹⁶ It also highlights issues related to bogus self-employment, significant barriers in accessing work-related insurance or accident coverage, and exposure to unsafe or non-standard working conditions, including verbal abuse and intimidation, particularly in small enterprises or unregulated workplaces.¹¹⁷ Interview findings further suggest that many workers in an irregular situation remain uncertain as to whether they are legally entitled to work,¹¹⁸ underscoring not only the ambiguity surrounding their position within the labour market framework but also the limited awareness many migrant workers in an irregular situation have of the rights and protections that may nonetheless apply to them.

Wage-related abuses are particularly prominent. Workers with an irregular status frequently experience underpayment and non-respect of the minimum wage, with many receiving far below the legal rate.¹¹⁹ Some are pushed into piece-rate arrangements or employed for weeks without any written contract.¹²⁰ Many workers in an irregular

situation report receiving no remuneration at all, or far less than what had been verbally promised.¹²¹

In terms of occupational safety and health, workers in an irregular situation experience significantly heightened exposure to hazardous tasks.

- ▶ In **construction**, falls from scaffolding and crush injuries are common.
- ▶ In **cleaning**, ladder falls and musculoskeletal strain are reported.
- ▶ In **hospitality**, burns and cuts predominate.
- ▶ In **agriculture**, machinery accidents are frequent.
- ▶ In **domestic work**, irregular migrant women face particular risks, including falls from stairs while cleaning private households.¹²²

These occupational hazards highlight the intersection of irregular status with the sectoral segmentation of the labour market, in which migrants especially women are concentrated in some of the most precarious and physically demanding jobs. At EU level, the Occupational Safety and Health Framework Directive (89/391/EEC) sets minimum standards, but its exclusion of domestic workers in private households (Art. 3(a)) means that many irregular migrant women are not formally covered by the Directive. This gap is relevant given that domestic and care work are among the most common forms of employment for women in an irregular situation. Some Member States, however, go beyond the EU minimum. In Belgium, amendments to the Workers' Well-Being Act and the Royal

¹¹⁶ Interview with Fédération générale du travail de Belgique, 2025.

¹¹⁷ Interview with Fédération générale du travail de Belgique, 2025 ; Interview with Confédération des Syndicats Chrétiens, 2025.

¹¹⁸ Interview with FAIRWORK Belgium, 2025

¹¹⁹ Interview with Fédération générale du travail de Belgique, 2025.

¹²⁰ Ibid.

¹²¹ Interview with FAIRWORK Belgium, 2025. Interview with Fédération générale du travail de Belgique, 2025.

¹²² Interview with FAIRWORK Belgium, 2025.

Decree of 7 May 2023 extended national OSH legislation to domestic workers and household staff with an employment contract, introducing obligations such as risk assessment, written information on hazards, and health surveillance. Nonetheless, enforcement in private households is complex, and workers in irregular or undeclared situations may still experience limited practical protection.

Migrant women in domestic work

Despite its pivotal role in sustaining households' care needs and enabling the reconciliation of work and family life, domestic work remains embedded in a structural context of low social recognition.¹²³ Domestic work is shaped by gendered and intersectional inequalities, including gender, poverty, racism and migration issues, that exposes many workers, especially migrant women, to heightened vulnerability and undervalued in the labour market, and more broadly in society.¹²⁴ Additionally, the fact that domestic work occurs in private households makes labour law enforcement difficult, as labour inspectorates often lack authority to enter homes.¹²⁵

In Belgium, particularly in the Brussels-Capital Region, the domestic work sector is heavily reliant on women migrant workers, many of whom are in an irregular situation and employed directly within private households. Workers describe long and unregulated working hours, often stretching late into the evening, with no entitlement to guaranteed rest days. For live-in workers, the boundaries between work

and rest become even more blurred, as they frequently reside in inadequate or overcrowded rooms offering little privacy or personal space. Beyond physical conditions, the psychological environment is also marked by strain. Reports include experiences of discriminatory attitudes, demeaning language, and a general climate of disrespect, all of which can contribute to chronic stress and emotional exhaustion.¹²⁶

These risks are shaped by the intersection of gender, race, and residence status. Women in an irregular situation working in domestic work, face a set of gender-specific vulnerabilities that significantly deepen their precarity. Their employment in private households often leaves them isolated and heightens exposure to psychological pressure, harassment, and strong dependency on employers.¹²⁷ The intersecting effects of gender, race, and residence status deepen this dependency, with many migrant women in an irregular situation accepting difficult or unsafe conditions, including during pregnancy or illness, because they have no access to maternity protection, healthcare, or social security and cannot risk losing their income or place to live.¹²⁸

This situation is compounded by an increasingly hostile political and social climate around migration. Many domestic and care workers without regular status describe living in constant apprehension. Fear of job loss, detention, or deportation, combined with dependence on employers for basic needs, creates a pervasive sense of insecurity, psychological pressure, and

123 Kiss, M. (2015). Invisible jobs: The situation of domestic workers (Briefing EPRS_BRI(2015)573874). European Parliamentary Research Service.

124 Equinet. (2022). Domestic and care workers in Europe: An intersectional issue.

125 European Labour Authority. (2021). Tackling undeclared work in the personal and household services sector.

126 Interview with Confédération des Syndicats Chrétiens, 2025.

127 Ibid.

128 Ibid.

persistent anxiety.¹²⁹ These conditions have a profound impact on workers' daily lives, well-being, and overall health.¹³⁰

One key initiative addressing these challenges is the Ligue des travailleuses domestiques, established in 2018 with the support of CSC-Brussels and the Centre d'Information et d'Éducation Populaire of the Mouvement Ouvrier Chrétien. The League brings together migrant women in an irregular situation employed in domestic work, offering a space for collective organisation, legal information, and mutual support. Through this structure, CSC formally recognises workers in an irregular situation by offering membership, empowering them as political actors within the union, providing them with a mandate and a platform to voice their struggle and, advocating for their rights.¹³¹ A wide range of advocacy, artistic and community-building initiatives have been central to the League's work, including theatre performances, photo exhibitions and legal-rights workshops that build visibility and collective empowerment. Among its key actions, the League organised Brussels' first strike of domestic workers on 16 June 2022 to demand decent working conditions and regularisation and staged a public 'tribunal of political courage' in 2023 in a symbolic location between the Palace of Justice and the Labour Court to condemn the Government's failure to protect domestic workers in an irregular situation.

At policy level, Belgium introduced the *titres-services* scheme in 2001 to formalise domestic

work, create jobs for low-skilled workers, and support households through subsidised services. The reform aimed to bring undeclared household labour into the formal economy, create employment opportunities for low-skilled workers, and support households' work-life balance through subsidised services. While it has improved stability and protections for workers with regular residence status, it excludes those in an irregular situation, who remain outside its safeguards.¹³²

Access to justice and compensation

Despite the formal transposition of worker-protection provisions from EU law, migrant workers with an irregular status in Belgium continue to face profound and overlapping barriers when attempting to claim their rights.

Workers in an irregular situation usually begin by turning to the people around them when they want to seek support or advice. Friends, co-workers, and community contacts are often the first to give advice, simply because they are accessible and trusted.¹³³ When the situation requires more structured support, workers tend to approach well-known NGOs such as FAIRWORK Belgium or Ciré.¹³⁴ These organisations offer free and confidential guidance, help clarify options coordinating with lawyers and trade unions to move a case forward. Direct engagement with labour inspectorates is rare, given the complex institutional landscape (with five different inspectorates) and, the absence of systematic interpretation.¹³⁵

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Safuta, A., & Camargo, B. (2019). 'The more things change, the more they stay the same? The impact of formalising policies on personalisation in paid domestic work-the case of the service voucher in Belgium' *Comparative Migration Studies* 7(1), 14.

¹³³ Interview with Fédération générale du travail de Belgique, 2025.

¹³⁴ Interview with Fédération générale du travail de Belgique, 2025.

¹³⁵ Interview with FAIRWORK Belgium, 2025.

Migrant workers in an irregular situation live with a fear that seeking justice could put them on the path to deportation.¹³⁶ Nonetheless, an informal understanding exists between the labour inspection service for Control of Social Laws, the Immigration Office, Myria – Federal Centre for Migration, and FAIRWORK Belgium. Under this arrangement, when a worker lodges a complaint with the support of Myria or FAIRWORK Belgium and a workplace inspection follows, the worker will be issued an order to leave the territory but will not be subjected to detention.

The centrality of NGOs is institutionalised in law. FAIRWORK Belgium's role is further enhanced because of their formal legal mandate that recognise their supporting role as intermediaries for migrants in an irregular situation [as part of the transposition of Article 13(1) of the Employers Sanctions Directive 2009/52/EC] (S01). This mandate has also been granted to Ciré.¹³⁷

Even with a support chain in place, including personal networks, NGOs, trade unions, migrant workers with an irregular status still confront a web of obstacles when they try to claim their rights. Evidence from the three interviews gathered in this case study echoes what academic and grey literature has long shown, revealing a persistent set of obstacles, outlined below, that systematically undermine workers' ability to claim their rights.

- ▶ Fear of deportation due to the absence of a formalised firewall between labour inspections services and immigration authorities.

- ▶ No temporary protection during proceedings, leaving workers without legal status or income while cases move forward. Since filing a complaint automatically triggers the termination of employment because employers face sanctions for hiring migrant workers in irregular situation, workers are left without any protection or means of livelihood throughout the entire process.

- ▶ Lack of knowledge of rights presents an additional barrier. Many workers are unaware that they enjoy the same core labour rights as Belgian citizens, despite their irregular status.

- ▶ Time and duration of proceedings constitute another impediment. Even in the most favourable circumstances, labour rights proceedings take at least six months, while cases lasting two to three years are typical. One labour accident case reportedly extended over thirteen years, and is still ongoing.

- ▶ Proof and documentation are primary obstacles. Without contracts or payslips, most workers with an irregular status lack formal evidence of employment. Informal proof (such as text messages, photos, or records of wage transfers) is fragile and easily lost, particularly given the instability of undocumented life. Workers sometimes possess the skills or awareness to document cases in ways that would withstand legal scrutiny.

- ▶ Access to legal aid remains restricted. Whereas pro deo legal assistance is automatic in residence and asylum cases, it is not in labour cases. Migrant workers with

¹³⁶ FRA (2019), n. 34.

¹³⁷ Article 1, Royal Decree of 14 July 2022 determining the organisations that may take legal action as referred to in Article 8, first paragraph, 4° of the Act of 11 February 2013 establishing sanctions and measures for employers of illegally staying third-country nationals, 21 September 2022.

an irregular status must demonstrate the absence of income to qualify for aid, an often-paradoxical requirement in wage-theft cases. Moreover, few lawyers possess expertise in both migration and labour law.

- Psychosocial vulnerability and social isolation, especially among women, undermining the ability to pursue claims.

The absence of any structural protection against employer retaliation in Belgium drives FAIRWORK Belgium's advocacy for safe reporting channels and temporary residence permits for irregular workers pursuing labour rights claims. In its daily work, FAIRWORK Belgium therefore implements a set of risk-mitigation measures while advising workers in the pre-complaint phase.¹³⁸ The central strategy is to time complaints so that workers can first secure an alternative source of income, ensuring that the almost inevitable dismissal does not leave them without means.¹³⁹ This is complemented by careful case-risk assessments to ensure workers fully understand potential consequences, systematic evidence preparation (e.g. collecting messages, photos, videos, and witness statements before filing), and the mobilisation of solidarity networks that can provide temporary support such as housing or food to reduce immediate vulnerability.¹⁴⁰

Under Belgian and EU law, workers can in theory seek remedies for labour abuses. The EU Employers' Sanctions Directive (2009/52/EC) requires that workers with an irregular status be paid any due wages (at least the minimum wage) and mandates accessible complaint mechanisms. Belgium transposed the Directive and the national rules formally allow workers with an irregular status to claim unpaid wages and, in theory, access residence permits in cases of trafficking in human beings.¹⁴¹ However, as is the case across the EU, actual implementation has been very limited.¹⁴² In Belgium, awareness of these mechanisms appears to be limited, a circumstance that is reflected in the relatively low number of complaints lodged with labour inspection services by migrant workers in an irregular situation,¹⁴³ nevertheless where complaints are submitted there is a real prospect of wage recovery.

Positive outcomes in court cases have been achieved primarily in OSH cases, where compensation through FEDRIS has been secured even for workers without legal residence, and in a small number of wage recovery claims in sectors such as construction and HORECA.¹⁴⁴ Sometimes migrant workers leave the country while the proceeding is still pending. However, although proceedings can, and in some cases do, continue to completion after the worker has left Belgium, a significant practical obstacle arises once the worker is abroad as the contact is frequently lost, leaving

¹³⁸ Interview with FAIRWORK Belgium, 2025.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Wintermayr, & Weatherburn. (2021), n. 105.

¹⁴² European Commission. (2021). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 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, Brussels, 29.9.2021 COM (2021) 592 final.

¹⁴³ For example, in 2024, 35 complaints related to the unpaid wages of irregular or precarious migrant workers were supported by FAIRWORK Belgium, FAIRWORK Belgium. (2025). *Travailleurs Sans Papiers: Rapport Annuel 2024*.

¹⁴⁴ Interview with FAIRWORK Belgium, 2025.

the workers without actual access to the compensation awarded.¹⁴⁵ When it comes to OSH issues, Belgium's occupational accident regime provides a further, if narrow, safety net. Employers are legally required to insure against workplace accidents, and FEDRIS serves as guarantor of last resort where employers fail to comply. This mechanism has enabled some irregular migrant workers to access compensation, even across borders when victims returned to their country of origin. Yet it remains an essentially ex post remedy, offering redress only after harm has occurred rather than addressing the systemic risks of unsafe and exploitative working conditions.¹⁴⁶

3.3 Access to representation

The importance of representation of migrant workers by trade unions and civil society organisations was underlined by all survey respondents.

Whilst it is clear that all workers are vulnerable to exploitation, trade union representation is particularly of importance for migrant workers because they “face additional vulnerability that mean they made need additional protection.” (S01) similarly migrant workers experience specific instances of unequal treatment and exploitation (e.g., debt bondage, payment of fees of intermediaries) (S10):

“Migrant workers face multiple vulnerabilities such as precarious employment, discrimination, and legal uncertainties linked to their migration status. Trade unions, despite their challenges, remain one of the few collective platforms capable of negotiating better working conditions

and social protections. Meanwhile, CSOs play an indispensable role in filling the gaps left by weak unions by providing targeted support, legal advice, and advocacy. Together, they help to amplify migrant workers' voices, promote their rights, and push for stronger protections in a labour market where these workers often remain invisible and marginalized. Without this dual representation, migrant workers risk exploitation and exclusion from critical decision-making processes affecting their livelihoods.” (S02)

As has become clear throughout the previous parts of this study, the possibility to receive support and assistance from third party organisations is crucial to overcoming enforcement gaps and access to justice (S10). However, the possibility of receiving representation remains limited and patchy depending upon human and financial resources and the (geographical) outreach of the organisation (S01).

Accessing the support and services of trade unions is heavily dependent upon membership, and whilst the conditions of membership can be country and/or sector specific (S01, S03a, S07, S12), and restrictive conditions related to migration status and duration of employment (S03a, S12, S14) can make it difficult to become affiliated. Furthermore, full access to advice and support requires payment of a fee (S02, S05, S10, S12) and whilst in some instances, unions are adapting to provide more inclusive membership policies and outreach efforts (S02), these remain limited. As such, it was strongly held belief that workers should have the same representation as any other worker,

¹⁴⁵ Ibid.

¹⁴⁶ FEDRIS, n.d.-a; FEDRIS, n.d.-b.

regardless of employment relationship, type or duration (S05, S06, S12), and it should be “accessible, safe and effective” (S12).

“Migrant workers should be represented by trade unions or workplace bodies under the same circumstances and conditions as any other worker. Any employment relationship – regardless of its type or duration – should be sufficient.” (S06)

However, studies show that immigrant workers are significantly less likely to be trade union members than native workers in similar jobs. This union membership gap appears across many EU countries and sectors, reflecting both structural factors and integration hurdles. Migrants are often concentrated in sectors with lower union presence (e.g., agriculture, domestic work, hospitality) and in short-term or agency jobs that are hard to organize. High turnover and uncertainty about length of stay also reduce union participation. Migrants who expect to leave or change jobs quickly are less inclined to join collective organizations.

While unionization tends to increase the longer migrants reside in a host country, a substantial representation gap remains. This under-unionization means migrant workers’ voices are often missing in formal social dialogue, weakening enforcement of their labour rights relative to native workers.

The respondents emphasised the collective nature of migrant workers’ representation (S03B, S11, S12, S13, S14) in defending migrant workers’ rights and preventing abuses.

“Representation ensures collective bargaining power, prevents isolation (or perception thereof) and provides a counter to abusive practices by employers” (S14)

Trade unions, in particular, are able to formally represent all workers in negotiations with employers relating to better pay, working conditions and access to social security (S08, S12), advocating for equal treatment (S04), promotion and protection of rights (S05, S11, S12), and encourage participation of migrant workers in social dialogue (S10, S12, S13).

There are however concerns in relation to low unionisation levels (S02, S08, S13) limitations to financial and human resources (S02, S10, S14), a lack of capacity to act in high-risk sectors (S02) and the potential for exclusion of irregular workers from the scope of trade union membership and access to services that membership offers (S01, S03a). Respondents also highlighted that there is a lack of interest and/or awareness amongst migrant workers (S6, S8) to affiliate themselves to a union which can be due to language and cultural barriers (S2), less tradition in country of origin of unions or collective bargaining (S14), and difficulties in engaging with migrant workers, who are hypermobile (transport sector) or temporary (seasonal workers) (S02) or working in a private settings (domestic workers (S05, S11)).

As with enforcement issues, respondents once again raised the concern that a lack of trust or fear of formalised services, means that migrant workers do not wish to contact organisations due to fear of exposure or deportation (S02, S04), especially in countries where anti-union legislation formally restricts the work of trade unions in assisting migrant workers: e.g., in Hungary, trade unions cannot collectively

represent migrant workers but only help them on an individual basis (S04).

“The main barriers include legal and structural restrictions, such as minimum employment periods, formal employment requirements, or sectoral exclusions that prevent temporary, seasonal, or undocumented migrant workers from accessing union representation. Low unionisation in some sectors, high worker mobility (e.g., seasonal agriculture), and isolated workplaces—such as private households (PHS)—also limit effective engagement. Fear of retaliation, language barriers, and lack of awareness of union rights further reduce participation.” (S12)

As for civil society organisations, despite in some instances the lack of formal standing (S12), their role was also understood to play a crucial role in the representation of vulnerable migrant workers, particularly irregular workers, by offering advice, legal support, outreach and advocacy (S12). However, the scope and continuity of their services can be hindered by resource constraints (S01, S02, S10) and the ability to engaging in policymaking processes and provide effective representation can be limited by their lack of formal authority (S11, S12)

“Established organisations are often better positioned to enter formal processes, while grassroot or smaller migrant-led organisations may face bigger obstacles to be represented in policy discussions at least at EU level. Therefore, it is essential to ensure meaningful involvement of migrant worker associations, CSOs, and trade unions (particularly those led by migrants) in social dialogue and in all stages of

policymaking and monitoring. By integrating their diverse perspectives and lived experiences, policies can more effectively tackle systemic barriers.” (S11)

“CSOs often face limited formal authority to negotiate with employers, which restricts their ability to secure binding improvements. Funding constraints, high demand relative to staff capacity, and difficulties reaching isolated or mobile migrant workers can also limit their impact. However, CSOs play a crucial complementary role in outreach, legal advice, and advocacy, particularly for undocumented workers who cannot safely engage directly employers.” (S12)

Despite these concerns, CSOs are also seen to offer an alternative where trade unions are not able to provide coverage to certain groups of migrant workers:

“In an ideal world, every migrant worker would be part of a trade union, but CSOs sometimes have to bridge these gaps.” (S01)

In this regard, the survey respondents emphasised the need to a cooperative approach to providing access to representation to migrant workers, by strengthening cooperation (S11, S12, S13) and to create a “holistic protection framework” (S12):

“Trade Unions play a crucial role in collective bargaining, fair wages and decent working conditions to all workers (attention should be given to those sectors where unionisation rates are lower). At the same time, cooperation with CSOs is critical for outreach, counselling, psychosocial

support, legal support, and building trusted networks which can help and empower migrants to access their rights. Civil society actors are essential pillars of democracy, human rights, and social cohesion across the European Union, representing diverse communities and amplifying the voices of those most marginalised.” (S11)

Additional recommendations include:

“[...] European Commission and Member States should promote European and national social dialogue to strengthen

freedom of association and collective bargaining, ensuring that migrant workers are also included, for example, in sectoral negotiations. Equally, the organisation of migrant workers should also be promoted by the institutions and member states, with particular attention to outreach and accessibility of information. Finally, strengthening cooperation between trade unions, CSOs, and migrant-led organisations is key to overcoming representation inequalities and ensuring meaningful participation.” (S11)

Promising Practices in Strengthening Access to Representation

In Belgium, the centrality of NGOs in representing migrant workers with an irregular status has been formally institutionalised in law. As part of the transposition of Article 13(1) of Directive 2009/52/EC (Employers Sanctions Directive), the Belgian government recognised FAIRWORK Belgium and CIRÉ (Coordination et Initiatives pour Réfugiés et Étrangers) as officially mandated intermediaries authorised to act on behalf of irregular migrant workers in labour disputes.

Some trade unions have adapted their membership structures to be more inclusive of migrant and precarious workers. One survey respondent noted that certain unions use different membership “quotas” or fee levels depending on a worker’s employment status (S05). In practice, this means reduced dues or special categories for those who are unemployed, temporary, or in irregular work, making it easier for migrant workers in unstable jobs to join and receive support. Literature on union innovation suggests that lowering cost barriers and tailoring services for workers increases their willingness to unionise.¹⁴⁷ In Germany, the construction and agriculture union IG Bauen-Agrar-Umwelt (IG BAU) introduced a one-year low-cost membership tailored for migrant seasonal workers in agriculture (S10). This short-term membership (available for a reduced fee) grants migrant farmworkers full union benefits during their work season, including free legal advice and representation in disputes.¹⁴⁸ This membership is cheaper than the regular rate, yet grants full union representation from the first day of joining, including legal advice, workplace representation, and dispute assistance. Importantly, for many seasonal workers, this is their first experience with union membership.¹⁴⁹

¹⁴⁷ Barth, E., Bryson, A., & Dale-Olsen, H. (2025). ‘Turning non-members into members: Do public subsidies to union membership matter?’ *Labour Economics*, 87, 102541.

¹⁴⁸ Danilova, K. (2024). *The harsh reality of seasonal labour in Germany*. openDemocracy, 12 November 2024.

¹⁴⁹ Ibid.

Unions collaborate across borders to protect migrant workers who move between countries (S01). The European Trade Union Confederation's UnionMigrantNet is one example: an EU-wide network of trade union helpdesks providing free advice to migrant workers on employment, documentation, and rights. UnionMigrantNet's provides information, assistance, and legal support to migrant workers across Europe, helping them understand and exercise their labour and social rights. It also strengthens cooperation among trade unions to promote fair labour mobility, facilitate migrants' integration, and encourage their active participation in trade union structures.

Cooperation between trade unions, civil society organisations, and migrant-led groups has proven effective in representing migrant workers (S11). For example, members of Eurodiaconia (a network of faith-based social service NGOs) implement holistic integration projects that involve unions and employers. In Spain, the project "Camino hacia el Empleo" (Path to Employment) by Diaconía España provides one-on-one job coaching for migrants and works directly with companies to promote rights awareness, intercultural communication, and non-discrimination in the workplace. Similarly in Italy, the Diaconia Valdese's Servizi Inclusione engages employers alongside community organizations to secure inclusive hiring and career development for refugees and migrants.

Many unions have created dedicated outreach programmes to engage migrant workers. In Italy, trade unions (CGIL, CISL, UIL) operate migration offices (Patronati) that offer free immigration and labour law assistance to migrant workers, helping them navigate work permits or report abuses (S14). In Denmark, the 3F union's Construction Workers branch (BJMF) made a concerted effort to welcome Eastern European migrants by hiring Polish- and Romanian-speaking organisers and providing informational materials in multiple languages.

3.4 The role of the Pillar

As with the rights protection gap and improvement of the enforcement of migrant worker rights, the ESPR principles and its Action Plan also have a role to play in closing the justice gap migrant workers face when seeking remedy and redress for violations of fundamental social rights.

Principle 5

Secure employment including fair and equal treatment regarding working conditions, access to

social protection and training, prevention of precarious working conditions and abuse of atypical contracts

► Reinforce mandate and capacity of labour inspectorates

For many migrant workers access to justice when they have not been granted secure and fair employment remains unrealised due to the limited capacity of labour inspectorates to effectively address complaints and more directly enforce sanctions against non-compliant employers.

► **Enable a safe reporting environment**

Firewalls are vital to enabling a safe reporting environment so that migrant workers feel empowered to make complaints without fear of retaliation or adverse consequences. The trust in authorities and institutions that is required can be built where the protection and fulfilment of the rights of migrant workers are prioritised as the primary function of public services over and above immigration enforcement responsibilities.

Principle 8

Social dialogue on design and implementation of economic, employment and social policies and involvement of workers including right to be informed and consulted on matters relevant to them

► **Enhancing social dialogue and the strengthening the role of trade unions**

The pivotal role played by trade unions underlines the imperative of enhancing social dialogue and strengthening their role in the design and implementation of labour migration policy.¹⁵⁰ Trade unions can play a vital role in protecting and safeguarding (migrant) workers' rights, serious concerns pertaining to low-unionisation etc. demonstrate that in order to fulfil the guarantees of Principle 8 on social dialogue, sufficient funding and institutional support is crucial to enable actors to adapt and innovate their service provision with a view to reaching and representing vulnerable groups, including migrant workers and ensuring that their contribution to the economic and social progression of the European Social Model is met with the necessary solidarity from policy makers.

► **Promote a cooperative and holistic framework between trade unions and CSOs**

Civil society organisations are also vital social partners who are very often reinforcing the role of trade unions where there is a gap in service provision and/or are gatekeepers between migrant workers who may not yet have come into contact with trade union representatives. CSOs are essential intermediaries in efforts to secure access to justice and collective redress and efforts to build cooperative partnerships with trade unions to ensure holistic support for migrant workers are necessary.

Principle 12

Adequate social protection regardless of the type and duration of their employment relationship

► **Guarantee procedural safeguards and protection measures regardless of migration status**

Lack of access to legal assistance, including legal and language mediators are limitations in migrant workers' experience of both judicial and non-judicial proceedings. Conditions should be kept to a minimum and training of professional language mediators should include capacity building in relation to labour and migration related rights and entitlements.

► **Grant administrative stability during judicial or non-judicial proceedings**

It is necessary to provide for very specific measures to migrant workers by virtue of the administrative status imposed upon them by the EU labour migration acquis and the conditions therein. Where migrant workers

¹⁵⁰ Kuptsch C., & Mieres, F. (Eds.) (2025). *Temporary Labour Migration: Towards Social Justice?* (International Labour Organization, 2025).

with a regular yet precarious migration status encounter difficulties that may lead to their loss of residence status, it is vital for temporary migration status to be offered. The same is necessary for irregular migrant workers who may require access to regularisation mechanisms when engaged in remediation or wage recovery processes. The current EU legal framework provides minimum standards in this regard under the Anti-Trafficking Directive (2011/36/EU), Employers Sanctions Directive (2009/52/EC) and the revised ESPR Action Plan could be pivotal to further improving their implementation, which to date has been of limited effect when guaranteeing access to remedy. The ESPR Action Plan can seek to go further than these minimum standards by underlining the importance of continued access to the labour market.

4 Operationalising the Rights of Migrant Workers in the Revised ESPR Action Plan - Recommendations

Pillar Principle	Recommendation	Governance Level	Operationalisation in Revised Action Plan
3 – Equal opportunities and non-discrimination	Inclusion and equal treatment of migrant workers	<i>EU/MS</i>	Limit exclusion by guaranteeing equal treatment and possibility to contest before courts through strategic litigation
5 – Secure Employment	Safe reporting mechanisms	<i>MS</i>	Establish firewalls between public service providers and labour inspectors, and immigration authorities to guarantee safe reporting by protecting from retaliation and adverse treatment.
		<i>EU</i>	Provide guidelines on the implementation of the Employer Sanctions Directive (2009/52/EC).
5 – Secure Employment	Reinforce mandate and capacity of labour inspectorates	<i>MS</i>	Improve capacity to respond to complaints and directly respond to non-compliance.
5 – Secure Employment	Expand role of ELA to facilitate cross-border cooperation	<i>EU</i>	<p>Extend mandate to encompass legal rules that are pivotal to safeguarding migrant workers' rights, notably the Seasonal Workers Directive (2014/36/EU), the Employers' Sanctions Directive (2009/52/EC) and the Anti-Trafficking Directive (2011/36/EU).</p> <p>Enhance the ELA's capacity to request information, initiate investigations, and apply dissuasive sanctions, together with Member States and social partners.</p>
7 – Information about employment conditions and protection in case of dismissals	Improve provision of information & increase awareness of rights	<i>MS</i>	<p>Develop targeted, accessible, multi-lingual information campaigns</p> <p>Facilitate migrant workers' access to language courses and integration courses, that include information on their rights and entitlements.</p> <p>Provide training to frontline professionals who can provide accurate legal guidance on labour rights and residence conditions.</p>

8 – Social dialogue	Enhance social dialogue	<i>EU</i>	Promote inclusive social dialogue that integrates migrant worker issues into the design and implementation of labour migration policies.
8 – Social dialogue	Strengthen role of trade unions	<i>MS</i>	Strengthen the role of trade unions and civil society in defending migrant workers' rights. Ensure adequate funding and institutional support for social partners to reach and represent vulnerable groups.
8 – Social dialogue	Promote a cooperative and holistic framework between trade unions and CSOs	<i>MS</i>	Recognise civil society organisations as essential intermediaries in access to remedy and collective redress. Promote and support partnership development between social partners
10 – Healthy and safe work environment	Recognise increased OSH risks for migrant workers	<i>EU</i>	Revise scope of OSH FD (83/391/EEC) to include domestic workers Improve monitoring and expand EU OSHA data collection to include migrant sensitive indicators
12 – Adequate social protection	Procedural safeguards and protection measures of workers regardless of migration status	<i>MS</i>	Limit the conditionality for eligibility to legal assistance Train professional language and cultural mediators to ensure full participation in proceedings.
12 – Adequate social protection	Grant administrative stability during judicial or non-judicial proceedings	<i>MS</i>	Provide temporary residence status for migrant workers facing loss of status during complaints or proceedings. Facilitate regularisation mechanisms for irregular workers engaged in remediation or wage recovery processes. Allow for continued access to the labour market.

Migrant workers generally receive lower wages and fewer benefits and work longer and more irregular working hours. The European Pillar of Social Rights (EPSR) and its Action Plan are meant to act as a compass toward a robust social Europe. Translated into ambitious and transversal policies, it has real potential to improve the well-being of people in Europe, including marginalised groups, by promoting equal opportunities and access to the labor market, fair working conditions and social protection and inclusion. The revision of the EPSR Action Plan provides a timely opportunity to embed migrant workers' rights at the heart of EU social policy, recognising the lived realities of migrant workers, ensuring that fair working conditions and fundamental labour rights are not contingent on migration status.

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**Co-funded by
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