

JUSTICE

Severe labour exploitation: workers moving within or into the European Union

Annexes on criminal law provisions
and inspection authorities



EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

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Severe labour exploitation: workers moving within or into the European Union

Annexes on criminal law provisions
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Annex III: Criminal law provisions relating to labour exploitation

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
Austria	<p>§104 of the Austrian Criminal Code (<i>Strafgesetzbuch</i>, StGB)¹ punishes the deprivation of liberty of a person through slavery and slavery-like practices.</p> <p>This offence is punishable by imprisonment for a period of 10 to 20 years.</p>	<p>§104a of the Austrian Criminal Code (StGB) prohibits all forms of trafficking in human beings.</p> <p>This offence is punishable by imprisonment for a period of six months to five years.</p>	<p>Article 116 of the Law on Migration Police (§ 116 <i>Fremdenpolizeigesetz</i>): Exploitation of an Alien ("<i>Ausbeutung eines Fremden</i>"); protects from exploitation anyone who is not an Austrian citizen and finds themselves in a situation of particular dependency ("<i>in einem besonderen Abhängigkeitsverhältnis</i>").</p> <p>The offence is punishable by imprisonment for a term not exceeding three years.</p> <p>However, if the victim faces hardship (<i>Not</i>) as a result of the offence, or if the offence is conducted against a larger number of victims, then it is punishable by imprisonment for a period of six months to five years.²</p> <p>Article 9 (1) (c) of the Employer Sanctions Directive was implemented through the adoption of §28c (2) 1 of the Employment of Aliens Act (<i>Ausländerbeschäftigungsgesetz</i>, <i>AuslBG</i>)³.</p> <p>This offence is punishable by imprisonment for a term not exceeding two years.</p> <p>Article 9 (1) (d) of the Employer Sanctions Directive was implemented through the adoption of §28c (2) 2 of the Employment of Aliens Act.</p> <p>This offence is punishable by imprisonment for a term not exceeding two years.</p> <p>Article 9 (1) (e) of the Employer Sanctions Directive was implemented through the adoption of §28c (1) of the Employment of Aliens Act.</p> <p>This offence is punishable by imprisonment for a term not exceeding six months or 360 daily fines in lieu of jail time.</p> <p>These provisions protect all foreigners without residence permits from exploitation.</p>

1 Austria, Criminal Code (*Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen, Strafgesetzbuch - StGB*), BGBl. Nr. 60/1974.

2 § 116 *Fremdenpolizeigesetz* 2005, BGBl I Nr. 100/2005.

3 Austria, Employment of Aliens Act (*Bundesgesetz vom 20. März 1975, mit dem die Beschäftigung von Ausländern geregelt wird, Ausländerbeschäftigungsgesetz - AuslBG*), BGBl. No. 218/1975.

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
Belgium	<p>Article 136ter (1) (3°) of the Criminal Code⁴ punishes slavery as a crime against humanity.</p> <p>This offence is punishable by imprisonment for life.</p>	<p>Article 433quinquies (1) (3) of the Criminal Code prohibits all forms of trafficking in human beings.</p> <p>This offence is punishable by imprisonment for a period of one to five years.</p>	<p>The Employer Sanctions Directive was transposed into Belgian law by the Law of 11 February 2013 on sanctions and measures for employers of illegally residing nationals of third countries.⁵</p> <p>This law introduced a new provision in the Social Penal Code (Article 175⁶) prohibiting the employment of illegally staying third-country nationals with no reference to any of the conditions listed in Article 9 (1) (c) to (e) of the directive.</p> <p>This offence is punishable by imprisonment for a period of six months to three years.</p> <p>However, the definition of trafficking in Article 433quinquies (1) (3) of the Criminal Code largely correlates with the elements listed in Article 9 (1) (c) to (e) of the Employer Sanctions Directive.</p> <p>This offence is punishable by imprisonment for a period of one to five years.</p>
Bulgaria	<p>These actions are criminalised only in the context of trafficking.</p>	<p>Trafficking is criminalised in Article 159 (a) to (d) of the Criminal Code.⁷</p> <p>This offence is punishable by imprisonment for a period of two to eight years.</p>	<p>Article 9 of the Employer Sanctions Directive was transposed in Article 227 of the Criminal Code.</p> <p>Regarding Article 9 (1) (c) of the directive (particularly exploitative conditions), Article 227 (5) of the Criminal Code envisages a qualified punishment for those who employ a third-country national staying in an irregular situation under “working conditions that substantially differ from the working conditions of lawfully employed persons and violate human dignity”.</p> <p>Articles 9 (1) (d) (exploiting a victim of trafficking) and 9 (1) (e) (illegal employment of minors) are literally transposed in Article 227 (2) and (3) of the Criminal Code, respectively.</p> <p>These offences are punishable by imprisonment for a term not exceeding five years.</p>

4 Belgium, Criminal Code (*Code Pénal*), as amended by the Law of 29 April 2013 (in French).

5 Belgium, Law of 11 February 2013 on sanctions and measures for employers of illegally residing nationals of third countries (*Loi prévoyant des sanctions et des mesures à l'encontre des employeurs de ressortissants de pays tiers en séjour illégal*), in force since 4 March 2013, Government Gazette 22 February 2013 (in French).

6 Belgium, Social Penal Code (*Code Pénal Social*), 6 June 2010.

7 Bulgaria, Criminal Code (*Наказателен кодекс*), 2 April 1968.

Member State	Slavery/servitude/forced labour	Trafficking	Exploitation in employment
Croatia	Slavery is criminalised in Article 105 of the Criminal Code. ⁸ This offence is punishable by imprisonment for a period of one to ten years.	Article 106 of the Criminal Code prohibits all forms of trafficking in human beings. This offence is punishable by imprisonment for a period of one to ten years.	Article 135 of the Criminal Code prohibits the employment of “aliens who are illegally staying in the Republic of Croatia” under the conditions established in Article 9 (1) (c) to (e) of the Employer Sanctions Directive. This offence is punishable by imprisonment for a period of six months to five years.
Cyprus	Article 8 of Law 60 (I) 2014 on the Prevention and Combating of Trafficking and Exploitation of Human Beings and Protection of Victims ⁹ criminalises forced or compulsory labour or services, slavery or practices similar to slavery or servitude. This offence is punishable by imprisonment for a term not exceeding six years.	Article 5 of Law 60 (I) 2014 prohibits all forms of trafficking in human beings. This offence is punishable by imprisonment for a term not exceeding 15 years.	Article 9 (1) (c) to (e) of the Employer Sanctions Directive was transposed in Article 18PH (1) of the Aliens and Immigration Law (Law N 100 (I) 2012). This offence is punishable by imprisonment for a term not exceeding five years.
Czech Republic	These actions are criminalised only in the context of trafficking (Article 168 of Criminal Code ¹⁰).	Article 168 of the Criminal Code prohibits all forms of trafficking in human beings. This offence is punishable by imprisonment for a term not exceeding 15 years.	Article 342 of the Criminal Code punishes he or she “who consistently, repeatedly, under particularly exploitative working conditions or to a greater extent employs foreigners who are staying illegally on the territory of the Czech Republic or do not have a valid work permit”. This offence is punishable by imprisonment for a term not exceeding six months.
Denmark	These actions are criminalised only in the context of trafficking (Section 262a of the Criminal Code ¹¹) Forced labour, when not involving trafficking, can also be punished as illegal coercion under Section 260 of the Criminal Code. This offence is punishable by imprisonment for a term not exceeding two years.	Section 262a of the Criminal Code (as amended by Act No. 871 of 4 July 2014) prohibits all forms of trafficking. This offence is punishable by imprisonment for a term not exceeding 10 years.	Not bound by the Employer Sanctions Directive.

8 Croatia, Criminal Code (*Kazneni zakon*) (2011), Official Gazette (*Narodne novine*) Nos. 125/2011 and 144/2012.

9 Cyprus, Law 60(I)/2014 on the Prevention and the Combating of Trafficking and Exploitation of Human Beings and the Protection of Victims (*Ο περί της Πρόληψης και της Καταπολέμησης της Εμπορίας και Εκμετάλλευσης Προσώπων και της Προστασίας των Θυμάτων Νόμος του 2014*), 15 April 2014.

10 Czech Republic, Criminal Code (*Trestní zákoník*), 40/2009, 1 January 2010.

11 Denmark, Criminal Code (*Straffelov*), as amended by Act No. 871 of 4 July 2014.

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
Estonia	<p>Article 133 of the Criminal Code¹² criminalises forced labour and slavery under the offence of trafficking in human beings:</p> <p>“(1) Placing a person in a situation where he or she is forced to work under unusual conditions [...], or keeping a person in such situation, if such act is performed through deprivation of liberty, violence, deceit, threatening to cause damage, by taking advantage of dependence on another person, helpless or vulnerable situation of the person”.</p> <p>This offence is punishable by imprisonment for a period of one to seven years.</p>	<p>Article 133¹ (1) of the Criminal Code prohibits all forms of human trafficking. The offence is called ‘support for human trafficking’ and it punishes the “transportation, delivery, escorting, acceptance, concealment or accommodation without prior authorisation of a person placed in any situation specified in article 133 of this Code”.</p> <p>This offence is punishable by imprisonment for a term not exceeding five years.</p>	<p>Article 260¹ (3) to (5) of the Criminal Code transposes Article 9 (1) (c) to (e) of the Employer Sanctions Directive. This article criminalises the employment of “aliens staying in Estonia without legal basis”.</p> <p>This offence is punishable by imprisonment for a term not exceeding three years.</p>
Finland	<p>These actions are criminalised only in the context of trafficking.</p>	<p>Chapter 25 Section 3 of the Criminal Code¹³ criminalises trafficking in human beings for the purposes of forced labour.</p> <p>This offence is punishable by imprisonment for a period of four months to six years.</p> <p>Chapter 25 Section 3 (a) (2) of the Criminal Code contains an aggravated offence of trafficking in human beings, when this is committed for the purposes of slavery or servitude.</p> <p>This offence is punishable by imprisonment for a period of two to ten years.</p>	<p>Chapter 47 Section 6 (a) of the Criminal Code criminalises the “unauthorized use of foreign labour.” This provision was introduced in 2004, before the Employer Sanctions Directive, and it punishes the employment of “foreigners not in possession of the residence work permit or otherwise a permit to work in Finland”, with no reference to any of the conditions listed in Article 9 (1) (c) to (e) of the Directive.</p> <p>This offence is punishable by imprisonment for a term not exceeding one year.</p>

¹² Estonia, Penal Code (*Karistusseadustik*), 6 June 2001 (State Gazette I 2001, 61, 364).

¹³ Finland, Criminal Code (*Rikoslaki*), as amended by Act 159/2015 of 26 February 2015.

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
France	<p>Slavery is criminalised in Article 224-1A of the Penal Code.¹⁴ The exploitation of an enslaved person is criminalised in Article 224-1B of the Penal Code.</p> <p>These offences are punishable by imprisonment for a term not exceeding 20 years.</p> <p>Servitude is criminalised in Article 225-14-2 of the Penal Code.</p> <p>This offence is punishable by imprisonment for 10 years.</p> <p>Forced labour is criminalised in Article 225-14-1 of the Penal Code.</p> <p>This offence is punishable by imprisonment for seven years.</p>	<p>Article 225-4-1 of the Penal Code prohibits all forms of trafficking in human beings.</p> <p>This offence is punishable by imprisonment for 10 years.</p>	<p>Article L8256-2 of the Labour Code¹⁵ criminalises the employment of third-country nationals in an irregular situation, with no reference to any of the conditions listed in Article 9 (1) (c) to (e) of the Employer Sanctions Directive.</p> <p>This offence is punishable by imprisonment for five years.</p> <p>Article 225-13 and 225-14 of the Penal Code punishes labour exploitation, that is, the imposition of working conditions contrary to human dignity through “abusing the victim’s vulnerability or dependence”.¹⁶ The Court of Cassation has reiterated that a third-country national in an irregular situation is considered to be in a state of vulnerability within the scope of this provision.¹⁷</p> <p>This offence is punishable by imprisonment for five years.</p>
Germany	<p>These actions are criminalised only in the context of trafficking and abduction.</p>	<p>Article 233 of the Criminal Code (<i>Strafgesetzbuch</i>, StGB)¹⁸ criminalises all forms of trafficking for the purposes of labour exploitation (trafficking for sexual exploitation is criminalised in a separate provision, Article 232 of the StGB).</p> <p>This offence is punishable by imprisonment for a period of six months to 10 years.</p> <p>Article 233a of the StGB punishes assisting in trafficking by recruiting, transporting, referring, harbouring or sheltering another person.</p> <p>This offence is punishable by imprisonment for a period of three months to five years.</p>	<p>Article 9 (1) (c) to (e) of the Employer Sanctions Directive has been transposed in the Act to Combat Illegal Employment.¹⁹</p> <p>Article 9 (1) (c) of the directive has been transposed in Article 10 (1). This article criminalises the illegal employment of foreigners in an irregular situation under conditions that are manifestly dissimilar to those of German workers.</p> <p>Article 9 (1) (d) of the directive has been transposed in Article 10a, which criminalises the illegal employment of foreigners staying in an irregular situation who are victims of trafficking in human beings.</p> <p>Article 9 (1) (e) of the directive has been transposed in Article 11 (3), which criminalises the illegal employment of foreigners in an irregular situation under the age of 18 years.</p> <p>These offences are punishable by imprisonment for a term not exceeding three years.</p>

14 France, Penal Code (*Code Pénal*), consolidated text as of 14 February 2015.

15 France, Labour Code (*Code du Travail*), Chapter VI, ‘Criminal provisions: employment of an illegally staying third-country national’, consolidated text as of 28 February 2015.

16 France, Penal Code (*Code Pénal*), consolidated text as of 14 February 2015.

17 These provisions were introduced in the Penal Code in 1992 with the following aim, as explained by the accompanying document published in 1993: “Selon la circulaire du 14 mai 1993, ce dispositif a pour objet de ‘sanctionner plus sévèrement les marchands de sommeil et autres personnes exploitant des travailleurs immigrés en situation irrégulière’, même si ‘ces incriminations protègent, de façon générale, toutes les personnes vulnérables en situation de dépendance’ ” (*Cour de Cassation* (1993), ‘La vulnérabilité de la victime’, Section 1.2.1).

18 Germany, Criminal Code (*Strafgesetzbuch*), 13 November 1998.

19 Germany, Act to Combat Illegal Employment (*Schwarzarbeitsbekämpfungsgesetz*), 23 July 2004.

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
Greece	<p>Article 323 of the Criminal Code criminalises slave trading.</p> <p>This offence is punishable by imprisonment for life.</p>	<p>Article 323A of the Criminal Code, as amended by Law 4198/2013 on prevention of and fighting trafficking, protection of its victims and other dispositions,²⁰ prohibits all forms of trafficking.</p> <p>This offence is punishable by imprisonment for a period of three months to ten years.</p>	<p>Article 9 (1) (c) to (e) of the Employer Sanctions Directive has been transposed in Article 88 of Law 4052/2012.²¹</p> <p>Article 9 (1) (c) of the directive has been transposed in Article 88 (1) (c), which criminalises the employment of illegally staying third-country nationals in an irregular situation under particularly exploitative working conditions.</p> <p>This offence is punishable by imprisonment for a minimum of five months.</p> <p>Article 9 (1) (d) of the directive has been transposed in Article 88 (3), which states that when a third-country national is a victim of trafficking the penalty imposed should be that of Article 323A of the Criminal Code (trafficking).</p> <p>This offence is punishable by imprisonment for a term not exceeding 10 years.</p> <p>Article 9 (1) (e) of the directive has been transposed in Article 88 (2), which criminalises the employment of third-country nationals in an irregular situation under the age of 18 years.</p> <p>This offence is punishable by imprisonment for a minimum of six months.</p>
Hungary	<p>Article 193 of the Criminal Code²² criminalises forced labour.</p> <p>This offence is punishable by imprisonment for a period of one to five years.</p>	<p>Article 192 of the Criminal Code criminalises trafficking.</p> <p>This offence is punishable by imprisonment for a period of one to five years.</p>	<p>Article 356 of the Criminal Code criminalises the “unlawful employment of third-country nationals without authorization to undertake gainful employment” under the conditions listed in Article 9 (1) (c) to (e) of the Directive.</p> <p>This offence is punishable by imprisonment for a term not exceeding three years.</p>

20 Greece, Law 4198/2013, Prevention of and fighting human trafficking, protection of its victims and other dispositions (Πρόληψη και καταπολέμηση της εμπορίας ανθρώπων και προστασία των θυμάτων αυτής και άλλες διατάξεις) OG A' 215 of 11 October 2013.

21 Greece, Law 4052/2012, Law concerning the Ministry of Health and Social Solidarity and Labour and Social Security to apply the law Approval of Plans Financial assistance facility agreement between the European Financial Stability Facility (E.T.CH.S.), the Greek Republic and Bank of Greece, the Draft Memorandum of Understanding between the Greek Republic, the European Commission and the Bank of Greece and other urgent measures to reduce public debt and the preservation of the national economy and other provisions (Νόμος αρμοδιότητας Υπουργείων Υγείας και Κοινωνικής Αλληλεγγύης και Εργασίας και Κοινωνικής Ασφάλισης για εφαρμογή του νόμου «Έγκριση των Σχεδίων Συμβάσεων Χρηματοδοτικής Διευκόλυνσης μεταξύ του Ευρωπαϊκού Ταμείου Χρηματοπιστωτικής Σταθερότητας (E.T.Χ.Σ.), της Ελληνικής Δημοκρατίας και της Τράπεζας της Ελλάδος, του Σχεδίου του Μνημονίου Συνεννόησης μεταξύ της Ελληνικής Δημοκρατίας, της Ευρωπαϊκής Επιτροπής και της Τράπεζας της Ελλάδος και άλλες επείγουσες διατάξεις για τη μείωση του δημοσίου χρέους και τη διάσωση της εθνικής οικονομίας» και άλλες διατάξεις), OG A' 41, 1 March 2012.

22 Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről).

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
Ireland	These actions are criminalised only in the context of trafficking.	Sections 2–4 of the Criminal Law (Human Trafficking) Act 2008, as amended by the Criminal Law (Human Trafficking (Amendment)) Act 2013, prohibit all forms of trafficking in human beings. This offence is punishable by imprisonment up to, and including, imprisonment for life.	Not bound by the Employer Sanctions Directive.
Italy	Article 600 of the Criminal Code ²³ criminalises slavery or servitude. This offence is punishable by imprisonment for a period of eight to twenty years. Article 603-bis of the Criminal Code punishes the illegal organisation and exploitation of labour carried out through violence, threats, intimidation, or taking advantage of the vulnerabilities of workers. This offence is punishable by imprisonment for a period of five to eight years.	Article 601 of the Criminal Code prohibits all forms of trafficking in human beings. This offence is punishable by imprisonment for a period of eight to twenty years.	Article 22 (12) of the Migration Law ²⁴ (Legislative Decree 25 July 1998, No. 286, as amended by Legislative Decree 16 July 2012, No. 109) – punishes the employment of third-country nationals in an irregular situation, without reference to the conditions of Article 9 (1) (c) to (e) of the Employer Sanctions Directive. This offence is punishable by imprisonment for a period of six months to three years. Article 22 (12-bis) treats as an aggravating circumstance the employment of foreign workers without residence permits under particularly exploitative working conditions or when they are under 18 years of age. These aggravating circumstances can increase the penalty stipulated under Article 22(1) by one third or can double the sentence.
Latvia	These actions are criminalised only in the context of trafficking.	Section 154 of the Criminal Law ²⁵ prohibits trafficking. This offence is punishable by imprisonment for a period of three to eight years.	Section 280 (2) of the Criminal Law prohibits the employment of third-country nationals in an irregular situation under the conditions listed in Article 9 (1) (c) to (e) of the Employer Sanctions Directive. This offence is punishable by custodial arrest, or community service, or a fine not exceeding 200 times the minimum monthly wage.

23 Italy, Criminal Code (*Codice Penale*), 10 October 1930, consolidated text as of 15 December 2014.

24 Italy, Migration Law (*Testo unico sull'immigrazione*), Legislative Decree 25 July 1998, No. 286, as amended by Legislative Decree 16 July 2012, No. 109.

25 Latvia, Criminal Law (*Krimināllikums*), 17 June 1998.

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
Lithuania	<p>Article 147¹ of the Criminal Code²⁶ criminalises forced labour.</p> <p>This offence is punishable by imprisonment for a term not exceeding three years.</p> <p>Article 147² of the Criminal Code criminalises forcing a person to work under the conditions of slavery or “other inhuman conditions”.</p> <p>This offence is punishable by imprisonment for a term not exceeding eight years.</p>	<p>Article 147 of the Criminal Code prohibits trafficking.</p> <p>This offence is punishable by imprisonment for a period of two to ten years.</p>	<p>Article 292¹ of the Criminal Code prohibits the employment of third-country nationals in an irregular situation under the conditions listed in Article 9 (1) (c) to (e) of the Employer Sanctions Directive.</p> <p>This offence is punishable by imprisonment for a term not exceeding two years.</p>
Luxembourg	<p>These actions are criminalised only in the context of trafficking.</p>	<p>Article 382-1 of the Penal Code²⁷ prohibits trafficking.</p> <p>This offence is punishable by imprisonment for a period of three to five years.</p> <p>Article 382-2 of the Penal Code contains an aggravated offence of trafficking when certain means (force, coercion or fraud) have been used.</p> <p>This offence is punishable by imprisonment for a period of five to ten years.</p>	<p>Article 572-5 (1) (3-5) of the Labour Code²⁸ prohibits the employment of third-country nationals in an irregular situation in the conditions listed in Article 9 (1) (c) to (e) of the Employer Sanctions Directive.</p> <p>This offence is punishable by imprisonment for a period of eight days to one year.</p>
Malta	<p>These actions are criminalised only in the context of trafficking.</p>	<p>Article 248 (A) (1) of the Criminal Code, Cap. 9 of the Laws of Malta,²⁹ prohibits all forms of trafficking.</p> <p>This offence is punishable by imprisonment for a period of four to twelve years.</p>	<p>Article 7 (c), (d) and (e) of the Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations³⁰ transposes Article 9 (1) (c) to (e) of the Employer Sanctions Directive.</p> <p>This offence is punishable by an increase (“of one to two degrees”) of the penalty provided for in Article 3 of the same regulations.</p>

26 Lithuania, Seimas of the Republic of Lithuania (2000), Criminal Code of the Republic of Lithuania (*Lietuvos Respublikos baudžiamasis kodeksas*), No. VIII-1968, 26 September 2000 (as last amended on 15 May 2014).

27 Luxembourg, Penal Code (*Code Pénal*), consolidated text as of 1 September 2014.

28 Luxembourg, Labour Code (*Code du Travail*), consolidated text as of 1 January 2015.

29 Malta, Criminal Code, Chapter 9 of the Laws of Malta, 10 June 1854, www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574.

30 Malta, Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations, Legal Notice 432 of 2011, 4 November 2011, www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11772&l=1.

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
Netherlands	These actions are criminalised only in the context of trafficking.	Article 273f of the Penal Code ³¹ prohibits trafficking. This offence is punishable by imprisonment for a term not exceeding 12 years.	Article 197 of the Criminal Code criminalises the employment of third-country nationals in an irregular situation, with no reference to any of the conditions listed in Article 9 (1) (c) to (e) of the Employer Sanctions Directive. This offence is punishable by imprisonment for a term not exceeding one year.
Poland	These actions are criminalised only in the context of trafficking.	Article 115 (22) of the Criminal Code ³² prohibits trafficking. This offence is punishable by imprisonment for a period of three to 15 years.	Articles 9 and 10 of the Act of 15 June 2012 on the effects of performing work by foreigners staying illegally on Polish territory ³³ transpose Article 9 (1) (c) to (e) of the Employer Sanctions Directive. These offences are punishable by imprisonment for a term not exceeding three years.
Portugal	Article 159 of the Criminal Code ³⁴ criminalises slavery. This offence is punishable by imprisonment for a period of five to fifteen years.	Article 160 of the Criminal Code prohibits all forms of trafficking in human beings. This offence is punishable by imprisonment for a period of three to 12 years.	Article 185-A of Law 29/2012 of 9 August 2012, ³⁵ which amends the Aliens Law (Law 23/2007), transposes Article 9 (1) (c) to (e) of the Employer Sanctions Directive. Article 185-A (1) prohibits the employment of third-country nationals in an irregular situation with no reference to any of the conditions listed in Article 9 (1) (c) to (e) of the directive. This offence is punishable by imprisonment for a term not exceeding one year. Article 185-A (3) to (5) prohibits the employment of third-country nationals in an irregular situation under the conditions listed in Article 9 (1) (c) to (e) of the directive. Article 185-A (3): employment of a minor – this offence is punishable by imprisonment for a term not exceeding two years. Article 185-A (4): particularly exploitative conditions – this offence is punishable by imprisonment for a period of one to five years. Article 185-A (5): victim of trafficking – this offence is punishable by imprisonment for a period of two to six years.

31 The Netherlands, Criminal Code (*Wetboek van Strafrecht*), 3 March 1881, http://wetten.overheid.nl/BWBR0001854/gedigheidsdatum_03-03-2015#.

32 Poland, Criminal Code (*Kodeks karny*), 6 June 1997, <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970880553>.

33 Poland, Effects of Performing Work by Foreigners Staying Illegally on Polish Territory (*Ustawa o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczypospolitej Polskiej*), 15 June 2012, <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20120000769>.

34 Portugal, Criminal Code (*Código Penal*), 15 March 1995, www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis

35 Portugal, Law 29/2012 of 9 August 2012, amending Law 23/2007 regulating the entry, stay and exit of foreigners of Portuguese national territory (*Lei 29/2012 de 9 de agosto - Primeira alteração à Lei n.º 23/2007, de 4 de julho, que aprovou o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional*), 9 August 2012, www.acidi.gov.pt/es-imigrante/legislacao/legislacao-portuguesa.

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
Romania	<p>Article 209 of the Criminal Code³⁶ criminalises slavery.</p> <p>This offence is punishable by imprisonment for a period of three to 10 years.</p>	<p>Article 210 of the Criminal Code prohibits all forms of trafficking.</p> <p>This offence is punishable by imprisonment for a period of three to 10 years.</p>	<p>The employment of third-country nationals in an irregular situation is only considered to be a criminal offence when more than five persons have been employed under exploitative conditions, as established in Article 264 (3) of the Romanian Labour Code.³⁷ According to Article 36 of the Government Ordinance No. 25/2014,³⁸ which relates to the Employer Sanctions Directive, the employment of up to five third-country nationals in an irregular situation is only a misdemeanour, to be sanctioned with a fine and other accessory penalties.³⁹</p>
Slovakia	<p>These actions are criminalised only in the context of trafficking.</p>	<p>Article 179 (1) of the Criminal Code⁴⁰ prohibits all forms of trafficking in human beings.</p> <p>This offence is punishable by imprisonment for a period of four to ten years.</p>	<p>Article 251a of the Criminal Code prohibits the unlawful employment of third-country nationals under the conditions listed in Article 9 (1) (c) to (e) of the Employer Sanctions Directive.</p> <p>Article 251a (2) (a) punishes employment of a staying third-country minor in an irregular situation; Article 251a (2) (c) employment of a third-country national staying in an irregular situation under particularly exploitative conditions, and (d) employment of a third-country national who is a victim of trafficking.</p> <p>These offences are punishable by imprisonment for a period of six months to three years.</p>
Slovenia	<p>Article 112 of the Criminal Code⁴¹ criminalises slavery.</p> <p>This offence is punishable by imprisonment for a period of one to ten years.</p>	<p>Article 113 of the Criminal Code prohibits trafficking.</p> <p>This offence is punishable by imprisonment for a period of one to ten years.</p>	<p>Article 199 (3) of the Criminal Code criminalises the employment of “aliens who are not nationals of a Member State of the European Union and who illegally reside in the territory of the Republic of Slovenia” under the conditions listed in Article 9 (1) (c) to (e) of the Employer Sanctions Directive.</p> <p>This offence is punishable by imprisonment for a term not exceeding three years.</p>

36 Romania, Criminal Code (*Nou Cod Penal*), 24 July 2009.

37 Romania, Labour Code (*Codul Muncii*), 24 January 2003.

38 Romania, Government Ordinance no. 25/2014 concerning the employment and transfer of foreign workers on Romanian territory and amending several legal acts concerning the regime of aliens in Romania (*OG nr. 25-2014 privind încadrarea în muncă și detașarea străinilor pe teritoriul României și pentru modificarea și completarea unor acte normative privind regimul străinilor în România*), 26 August 2014.

39 The accessory penalties are: exclusion from entitlements to all public benefits, aid or subsidies, including EU funding, for a period of up to five years; exclusion from the participation in any procurement procedure for a period of up to five years; full or partial recovery of any public benefits, aid or subsidies, including EU funding, granted to the employer for a period of up to 12 months prior to the conviction.

40 Slovakia, Criminal Code, Act No. 300/2005 (*Trestný zákon*).

41 Slovenia, Criminal Code (*Kazenski zakonik, KZ-1*), 20 May 2008.

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
Spain	<p>Article 607bis (10) of the Criminal Code⁴² punishes slavery as a crime against humanity.</p> <p>This offence is punishable by imprisonment for a period of four to eight years.</p>	<p>Article 177bis of the Criminal Code prohibits all forms of trafficking in human beings.</p> <p>This offence is punishable by imprisonment for a period of five to seven years.</p>	<p>Article 312 (2) of the Criminal Code criminalises the employment of foreign citizens without work permits under conditions that negatively affect, suppress or restrict the rights that are recognised by legal provisions, collective bargaining agreements or individual contracts.</p> <p>This offence is punishable by imprisonment for a period of two to five years.</p>
Sweden	<p>These actions are criminalised only in the context of trafficking.⁴³</p>	<p>Chapter 4 (1) (a) of the Penal Code⁴⁴ prohibits trafficking.</p> <p>This offence is punishable by imprisonment for a period of two to ten years.</p>	<p>Chapter 20 Section 5 of the Aliens Act⁴⁵ criminalises the employment of third-country nationals in an irregular situation with no reference to the conditions listed in Article 9 (1) (c) to (e) of the Employer Sanctions Directive.</p> <p>This offence is punishable by imprisonment for a term not exceeding one year.</p> <p>In the government's assessment of the legislative changes needed to implement the Employer Sanctions Directive, it considered that Chapter 20 Section 5 of the Aliens Act covers all conditions under Article 9 (1) of the directive, since this provision is more comprehensive than Article 9 and covers all cases of employment of illegally staying third-country nationals.⁴⁶</p>

42 Spain, Criminal Code (*Código Penal*), 24 May 1996.

43 The provision criminalising human trafficking in the Penal Code (Chapter 4, Section 1(a)) does not explicitly "refer to slavery, practices similar to slavery and servitude as forms of exploitation. According to the Swedish authorities, the reference in the provision to 'other activity in a situation that places the person in distress' is interpreted broadly to include any form of exploitation not specifically listed. This provision was included in the current definition through amendments in 2004 and the *travaux préparatoires* of these amendments explicitly state that slavery, practices similar to slavery and servitude are meant to be covered by this wording"; Council of Europe, GRETA, Report 2014 (11).

44 Sweden, Penal Code (*Brottsbalk*) 1962:700, 21 December 1962.

45 Sweden, Aliens Act SFS 2005:716 (*Utlänningslagen 2005:716*).

46 Sweden, Ministry of Justice (2010), *The EU's Employer Sanctions Directive (EU:s direktiv om sanktioner mot arbetsgivare)* SOU 2010:63, p. 109.

Member State	Slavery/servitude/ forced labour	Trafficking	Exploitation in employment
United Kingdom	<p>Slavery, servitude and forced or compulsory labour are established as separate offences by Section 71 of the Coroners and Justice Act 2009⁴⁷ (applicable in England and Wales), Section 47 of the Criminal Justice and Licensing (Scotland) Act 2010⁴⁸ and Section 1 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.⁴⁹</p> <p>These offences are punishable by imprisonment for a term not exceeding 14 years in England, Wales and Scotland, and by imprisonment for life in Northern Ireland.</p>	<p>Sections 4 and 5 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004⁵⁰ prohibits trafficking in human beings for the purposes of labour exploitation in England and Wales. These provisions extend to Scotland, where they were amended by Section 46 of the Criminal Justice and Licensing (Scotland) Act 2010.⁵¹ In Northern Ireland, trafficking is criminalised in Section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.⁵²</p> <p>These offences are punishable by imprisonment for a term not exceeding 14 years in England, Wales and Scotland, and by imprisonment for life in Northern Ireland.</p>	Not bound by the Employer Sanctions Directive.

47 United Kingdom, Coroners and Justice Act 2009, 12 November 2009. The Modern Slavery Bill is currently being discussed in the House of Lords (for more information, see: www.publications.parliament.uk/pa/bills/lbill/2014-2015/0098/lbill_2014-20150098_en_2.htm#pt1-pb1-11g1). If the bill is passed, the penalty for the offence of slavery, servitude and forced or compulsory labour will be imprisonment for life.

48 United Kingdom, Criminal Justice and Licensing (Scotland) Act 2010, 6 August 2010. The Human Trafficking and Exploitation (Scotland) Bill was introduced on 11 December 2014 and is currently being discussed in the Scottish Parliament (for more information, see: www.scottish.parliament.uk/parliamentarybusiness/Bills/84356.aspx). If the bill is passed, the penalty for the offence of slavery, servitude, and forced or compulsory labour will be imprisonment for life.

49 Northern Ireland, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, 13 January 2015.

50 United Kingdom, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, 22 July 2004. The Modern Slavery Bill is currently being discussed in the House of Lords (for more information, see: www.publications.parliament.uk/pa/bills/lbill/2014-2015/0098/lbill_2014-20150098_en_2.htm#pt1-pb1-11g1). If the bill is passed, the penalty for the offence of human trafficking will be imprisonment for life.

51 United Kingdom, Criminal Justice and Licensing (Scotland) Act 2010, 6 August 2010. A Human Trafficking and Exploitation (Scotland) Bill was introduced on 11 December 2014 and is currently being discussed in the Scottish Parliament (for more information, see: www.scottish.parliament.uk/parliamentarybusiness/Bills/84356.aspx). If the bill is passed, the penalty for the offence of human trafficking will be imprisonment for life.

52 Northern Ireland, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, 13 January 2015.



Annex IV: Inspection authorities supporting victims⁵³

Member State	Competent authority	Tasks
Czech Republic	National Bureau of Labour Inspection	The supervisory work is carried out <i>ex officio</i> or following a complaint by the worker. The bureau can penalise employers for hiring illegal labour and can oblige the perpetrator to financially compensate for the due back payments (Labour Inspection Act No. 251/2005 ⁵⁴).
Estonia	Labour Inspectorate and Labour Dispute Committee	The Labour Inspectorate arranges for the exercise of state supervision in the working environment and labour relations, resolves individual labour disputes and implements state measures on the basis and to the extent prescribed by law. The Labour Dispute Committee, subordinated to the Labour Inspectorate, solves disagreements under private law over an employment contract between an employer (registered in the Republic of Estonia) and an employee. Estonia is one of the few Member States which literally states that if the foreign worker was employed in Estonia without a legal basis and (a) has left Estonia by the time of labour dispute, (b) leaves Estonia during the dispute or (c) is sent out of the country during the dispute, then the labour dispute will be carried out in his or her absence. ⁵⁵
France	French Office for Immigration and Integration (OFII)	If the foreign worker has been placed in an administrative detention centre, is under house arrest or is no longer in France, any relevant back payments are handed over by the employer to the OFII to be paid to the foreign worker (Article L.8252-4 of the Labour Code ⁵⁶). Where the employer fails to fulfil this obligation, the OFII recovers the funds due on behalf of the foreign worker (Article R.8252-8 to R.8252-13 of the Labour Code).
Latvia	State Labour Inspection (SLI)	The SLI provides consultations free of charge to employees regarding the issues of labour relations, work contracts, legal employment, payment of remuneration and legal remedies available. According to information provided by the head of the Consultation Centre of the SLI, the SLI also provides consultations to foreigners working in Latvia; during 2012–2014, SLI provided one consultation to workers from Bulgaria and one consultation to a worker from India. ⁵⁷ The SLI is also authorised to resolve disagreements between employers and employees. ⁵⁸
Lithuania	State Labour Inspectorates and Labour Disputes Commission	The Labour Disputes Commission is a mandatory pre-trial body examining individual labour disputes before they go to court (Article 287 Labour Code ⁵⁹). A complaint can be made by the worker to the State Labour Inspectorate. This body, before transmitting the worker's complaint to the Labour Disputes Commission, assesses the complaint and its annexes, if necessary contacts the employer or anyone else for additional information, which can include the submission to the employer of a thematic questionnaire and/or a request for written data. Thus, the State Labour Inspectorate transmits to the Labour Disputes Commission not only the complaint received but also all collected material. ⁶⁰

53 In 12 EU Member States, public authorities with powers of inspection can support workers or even act on behalf of them in proceedings (see Section 3.2 of the report).

54 Czech Republic, *Zákon o inspekci práce, zákon č. 251/2005 Sb*, 3 May 2005.

55 Estonia, Individual Labour Dispute Resolution Act (*Individaalse töövaidluse lahendamise seadus*) (1996), RT I 1996 3, 57.

56 France, Labour Code (*Code du Travail*), consolidated text as of 28 February 2015.

57 Latvia, State Labour Inspection (*Valsts darba inspekcija*), information provided by the head of the Consultation Centre, by phone, on 15 September 2014.

58 Latvia, State Labour Inspection Law (*Valsts darba inspekcijas likums*), Section 3 Paragraph 2 Clauses 3 and 4, 19 June 2008.

59 Lithuania, Seimas of the Republic of Lithuania (2002), Labour Code of the Republic of Lithuania (*Lietuvos Respublikos darbo kodeksas*), No. IX-926, 4 June 2002, Art. 287 (1) (as last amended on 10 July 2014).

60 Lithuania, State Labour Inspectorate under the Ministry of Social Security and Labour of the Republic of Lithuania (*Valstybinė darbo inspekcija prie Lietuvos Respublikos socialinės apsaugos ir darbo ministerijos*) (2014), email communication from the Lithuanian national focal point, 7 October 2014; Lithuania, Chief Inspector of the State Labour Inspectorate (*Lietuvos Respublikos vyriausiasis valstybinis darbo inspektorius*) (2011), *Rules regarding the examination of applications and rendering of services in the State Labour Inspectorate (Asmenų prašymų nagrinėjimo ir jų aptarnavimo Lietuvos Respublikos valstybinėje darbo inspekcijoje taisyklės)*, No. V-168, 29 July 2011, Art. 59–3.1. –59-3.3.3., 59-8. (as last amended on 13 May 2013).

Member State	Competent authority	Tasks
Malta	Inspectors at the Department for Industrial and Employment Relations	Under the Employment and Industrial Relations Act, ⁶¹ the inspectors at the Department for Industrial and Employment Relations ⁶² may carry out inspections and receive complaints on breaches of employment regulations. Foreign workers can forward their claims, which must be supported by documents, to the department. If the department finds that an offence has been committed, criminal proceedings may be instituted by the Police. The director of the department, instead of the police, may lay the charges before the Court of Magistrates, produce the evidence, plead and otherwise conduct the prosecution.
Netherlands	Inspectorate SZW	The Inspectorate SZW (<i>Ministerie van Sociale Zaken en Werkgelegenheid</i>) ⁶³ carries out inspections of companies to combat illegal employment, with the aim of checking whether or not employers legally employ foreign employees and pay employees at least the minimum wage. An inspection may be initiated as a result of a complaint by the worker, a representative or any other person, or because of violations revealed during a previous inspection.
Poland	National Labour Inspectorate	The employee is entitled to lodge a complaint with the competent National Labour Inspectorate, notifying the body of the inappropriate behaviour of the employer. Once the complaint is made, the labour inspector inspects the work facility and should notify the complaining person of the results thereof within 30 days. The inspector may, by an administrative decision, order the employer to pay outstanding remuneration.
Portugal	Authority on Working Conditions and Immigration and Border Service	Foreign workers can file a claim against their employer for the outstanding payment of wages before these authorities in accordance with the Labour Code, Article 276 (1) and (4). ⁶⁴
Romania	Labour Inspection	Foreign workers can file a written complaint against their employer with the Labour Inspectorate. ⁶⁵ Once a complaint has been lodged, the Labour Inspectorate is obliged to conduct a workplace inspection and provide the claimant with the visit results within 30 days. Before leaving the country and based on the results of the workplace inspection (which may be available after the foreigner has left the country), the foreigner may grant the power of attorney to a lawyer to initiate court proceedings in his/her absence.
Slovakia	Labour Inspectorate	Foreign workers can file a complaint before the competent Labour Inspectorate. In accordance with §7 of Act 126/2005 Coll. on Labour Inspection, the Labour Inspectorate is obliged to carry out an inspection within 30 days of the filing of the complaint, and immediately inform the worker about the results of the inspection. If the Inspectorate detects during the inspection any infringement of the prohibition of illegal employment, it can impose a penalty on the employer, order back payments and notify the competent authorities (the Social Security Institution, the Tax Office and the Police Department) about the infringement of the prohibition of illegal employment. If repeated infringement is detected, the Labour Inspectorate can file an initiative to start a criminal procedure against the employer or propose that the Licensing Office withdraw the employer's licence or prohibit the exercise of his/her trade or profession.

61 Malta, House of Representatives (2012), Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta.

62 Malta, Department for Industrial and Employment Relations; for more information, see: <https://dier.gov.mt/en/About-DIER/Our%20Mission/Pages/Our%20Mission.aspx>.

63 Netherlands, Inspectorate SZW; for more information, see: www.inspectieszw.nl/english/index.aspx.

64 Portugal, Labour Code, Law 7/2009 of 12 February, updated version (*Código do Trabalho Lei n.º 7/2009, de 12 de Fevereiro, versão actualizada*).

65 Association for Legal Intervention (2014), *Implementation of the Employer Sanctions Directive in Romania*.

Member State	Competent authority	Tasks
Spain	Public Prosecutor and Labour Inspectorate	When cases are brought before a criminal or a labour court, the victim is assisted during the proceedings by the Public Prosecutor. If the case is brought before a labour court on the basis of the violation of the victim's fundamental rights, the worker himself should bring charges (Article 177 (4) of Act 36/2011 on Social Jurisdiction). ⁶⁶ If, however, the case appears to involve exploitation or trafficking and should therefore be dealt with under criminal law, charges may be brought forward by an interested party lodging a complaint (Article 270 of the Code of Criminal Procedure; ⁶⁷ interested parties are the competent government inspection services, in particular the Labour Inspectorate), or <i>ex officio</i> by the Public Prosecutor (Article 303 of the Code of Criminal Procedure ⁶⁸).

66 Spain, Act 36/2011 of 10 October 2011 on Social Jurisdiction (*Ley 36/2011, de 10 de Octubre, reguladora de la jurisdicción social*), consolidated version 2014.

67 Spain (1882), Royal Decree of 14 September 1882 approving the Code of Criminal Procedure (*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*), consolidated version 2014.

68 *Ibid.*

HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

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