

## Social Fieldwork Research (FRANET)

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

Country report Portugal, September 2017

FRANET contractor: CESIS - Centro de Estudos para a Intervenção Social

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## 1. Executive summary

Particular risk factors that allow labour exploitation to happen are identified by the workers interviewed, first of all the lack of a legal residence status and the difficulties in procedures at the immigration authorities, including administrative requests, long periods of waiting and high economic costs. These factors increase the vulnerability of workers to excessive demands by employers insofar as challenges to the employer's authority may entail a risk of dismissal and therefore jeopardise obtaining or renewing a residence permit.

The economic vulnerability of migrant workers and their urgent need to earn some income also contribute to their falling into abusive working conditions. Employment in specific sectors such as agriculture, domestic service and construction may increase the risk of severe labour exploitation.

Only a minority of the interviewees sought assistance or reported the situation to the authorities. Among the others, the main reason for not reporting has been the fear of negative consequences such as losing their source of income, being expelled from Portugal or suffering a violent retaliation by the employer. The concern of jeopardising their stay in Portugal is a deterrent factor among both migrants in an irregular situation and migrants in a regular situation. Another important reason to be considered is the lack of trust in the capacity of the authorities to solve their problems. Many interviewees also mention a generalised lack of knowledge concerning workers' rights, immigrants' rights, and how and where to go for support.

Not more than four interviewees reported the situation to the police, and their assessment of the experience is mostly negative. The same happens with some of the interviewees who contacted the labour inspection authorities. Concerns are raised as to the quality of the assistance received, including limitations in the capacities and skills of the frontline staff in public services.

In turn, the eight interviewees that were involved in court proceedings make a mostly positive assessment of the importance of judicial action. Still they point out some problems in the operation of the judicial system, in particular the high costs of legal representation and the long length of court proceedings. They also have very limited if any information on the progress and/or outcome of the legal proceedings.

A common complaint pertains to unresolved problems concerning the past situation of exploitation, especially the inability to receive the money they are owed by former employers. Some interviewees also refer to the persistence of problems in their current work situation, such as remaining in an irregular situation due to the employer's unwillingness to engage in a formal employment relationship (i.e. with a work contract), precarious arrangements and frequent periods of unemployment, lack of access to welfare benefits in case of illness or unemployment, and low wages. Those working in agriculture also report the persistence of poor accommodation.

As to preventing labour exploitation, the interviewees call for a more active role by the authorities in controlling the practices of employers, better access to information on workers' and immigrants' rights, improvements in the legal framework and changes in administrative procedures.

To feel protected and respected, they would need above all that employers complied with the rights of foreign workers, in particular the rights to have a written work contract, social security contributions, holiday periods and a fixed working time. Doing without intermediaries such as recruitment agencies is defended by workers in various sectors. Improvements in the

procedures to secure their legal status in the country would also be an important advancement.

## 2. Short description of fieldwork/sample composition

This country report on severe labour exploitation in Portugal, from the migrant workers' perspective, is mostly based on empirical research, including 20 interviews and two focus groups.

### 2.1. Interviews

The 20 interviews covered nine foreign men and 11 foreign women, who experienced severe labour exploitation, since January 2013.

Concerning gender, it should be noted that most of our interviewees have work experiences – including those of severe labour exploitation – in sectors that employ a predominance of either men or women. This is the case of men in agriculture and in construction, as well as women in domestic work. Gender is also unevenly distributed across the target groups for this study as shown below. Therefore, gender differences and sectoral specificities are often difficult to disentangle when it comes to finding patterns and the possibilities of comparison are limited. However, we keep gender in mind throughout the report and highlight important elements in this respect whenever possible.

The selection and recruitment of the interviewees was made with the cooperation of a group of relevant national and local public authorities, trade unions and civil society organisations who were identified as gatekeepers of the SELEX II project in Portugal. At the outset of the fieldwork, these gatekeepers were invited to integrate an informal Advisory Group of the Project and attend a joint meeting at CESIS' facilities.

Most of the gatekeepers who had a more active participation are non-governmental organisations providing support to immigrants; a Local Immigrant Integration Support Centre and the criminal police were also able to identify and recruit a significant number of potential respondents in different areas of the country. Some of these gatekeepers are part of the Network for Support and Protection of Victims of Trafficking in Human Beings. One entity in particular is responsible for the regional specialized multi-disciplinary teams to assist victims of trafficking in human beings, the so-called EME (Multi-disciplinary Specialised Teams); this same organisation as well as another one run reception and support centres for victims of trafficking.

The first contact with the participants was always made by the gatekeepers to verify their availability and willingness to participate in the study. Only after the research team contacted these persons to schedule the interviews. The only exception to this procedure regards the criminal police; in this case, it was up to their local units to contact the potential interviewees in order to schedule the interviews.

The large majority of the interviewees (18) were identified by the gatekeepers. Only two persons were identified by members of the staff of our own organisation.

All the interviews were conducted face to face by the members of the research team, in a location and time schedule agreed with the respondent.

As to language, six interviews were conducted in English, namely with workers from Nepal and Bangladesh who do not speak Portuguese but feel comfortable in doing the interview in that language. Two interviews with Nepalese workers were conducted with the support via phone of an accredited Portuguese - Nepalese interpreter. The Information Note and the Consent Form were translated to Hindi, since this was the language preferred by those

interviewees. The remaining interviews were conducted in Portuguese, namely with Brazilian and African (from the Portuguese-speaking African Countries) persons.

The interviewing process was carried out between 9 April and 25 July 2017, in several geographical areas of Portugal - Lisboa, Amadora, Montijo, Cascais, Coimbra, and Faro –, and covering different economic sectors namely agriculture, food industry and service activities, and construction (all risk sectors previously identified during phase 1 of the research in 2014) and nationalities.

INTERVIEWS <sup>1</sup>					
		Economic sector	Nationalities	Male	Female
1	Posted workers	-	-	-	-
2	Seasonal workers <sup>2</sup>	Agriculture	• Nepalese	5	-
3	Domestic workers	Domestic service	• Brazilian • Cape Verdean • Guinea-Bissau	-	5
4	Applicants for international protection	-	-	-	-
5	Migrants in an irregular situation	• Domestic service • Home-care services to elderly people • Food industry • Retail • Construction • Restaurant • Agriculture	• Cape Verdean • Brazilian • Bengali • Guinea-Bissau • San Tomean • Nepalese • Ukrainian	3	6
6	Other foreign workers	• Construction	• Portuguese (country of origin in Western Africa)	1	-

All the interviewed seasonal workers (five), as well as one migrant in an irregular situation also working in the agricultural sector, thus six persons from the sample in total, are signalled as victims of trafficking in human beings.

It should also be noted that, despite the team's efforts in meeting the estimated number of interviews for each target group, it was not possible to correspond strictly to this goal.

<sup>1</sup> Please note that when referring to or quoting interviewees and focus group participants in this report, the country of origin is sometimes replaced with the more general geographical region in order to guarantee the anonymity of research participants.

<sup>2</sup> Please note that within this research, the term 'seasonal worker' has a wider scope than the definition of seasonal workers contained in the EU Directive on Seasonal Workers, and also includes seasonal workers under national schemes as well as under the EU Directive on Seasonal Workers. It also includes EU workers moving for seasonal work.

Furthermore, the research team was not able to interview any EU national. Two EU nationals were identified by two gatekeepers, but one refused to be interviewed and the other could not be reached by the gatekeeper. The research team also contacted a trade union representing call centre workers that include EU nationals that could be in a situation of labour exploitation but this contact was not effective.

Target group for interviews	Estimated number of interviews (EU and Third Country Nationals)	Number of interviews actually done (Third Country Nationals)
2) Seasonal workers	4	5
3) Domestic workers	8	5
5) Migrants in an irregular situation	8	9
6) Other foreign workers	-	1
Total	20	20

The circumstances which emerged most frequently as indicators of situations of severe labour exploitation are linked to: contract-related issues (the most prevalent indicator, among all categories); working conditions differing significantly from what was agreed; extremely long working hours; salary-related problems; and lack of social security payments.

<b>Circumstances which emerged as typical indicators of situations of severe labour exploitation of workers in employment relationships</b>		
Circumstance/indicator	Total number	Breakdown by category
no salary paid or salary considerably below legal minimum wage	11/20	6 IR, 1 O, 4 S
parts of remuneration flowing back to employer on various – often unreasonable – grounds	6/20	2 D, 3 IR, 1 S
lack of social security payments	10/10	3 D, 6 IR, 1 O
extremely long working hours	13/20	3 D, 5 IR, 1 O, 4 S
very few or no days of leave	7/20	1 D, 3 IR, 3 S
working conditions differ significantly from what was agreed	14/20	4 D, 6 IR, 1 O, 3 S
worker lives at the workplace	7/20	1 D, 1 IR, 5 S
hardly any contact with nationals or persons from outside the workplace	6/20	1 O, 1 IR, 4 S
passport retained, limited freedom of movement	2/20	1 O, 1 S
no contract, or contract not in a language the interviewee could understand	16/20	3 D, 7 IR, 1 O, 5 S

## 2.2. Focus groups

The two focus groups covered the sectors, respectively, of 'Domestic service' and 'Construction'.

FOCUS GROUPS					
	Target group	Economic sector	Nationality	Male	Female
1	Domestic workers	Domestic service	<ul style="list-style-type: none"> <li>• Brazilian</li> <li>• Portuguese (originally from Central Africa)</li> </ul>	-	3
2	Other foreign workers (all workers are in Portugal for a long time)	Construction	<ul style="list-style-type: none"> <li>• Cape Verdean</li> </ul>	3	-

The first one took place on 1 July 2017, at CESIS' facilities, with a group of three female domestic workers. These were recruited in cooperation with an NGO that gives support to foreign women working in domestic service. Contacts were also made with a trade union that is supporting some immigrant women giving home-care support to elderly persons.

The second focus group took place on 28 July 2017, at the facilities of a gatekeeper in the Cova da Moura neighbourhood (in Amadora, surroundings of Lisbon). The participants were three male workers in the construction sector, recruited with the support of two local NGOs that provide support to the resident population, in most cases with a migration background.

In sub-section 2.3 more details are given to explain the number of participants in each focus group.

Both focus groups were conducted in Portuguese, and allowed for a lively, highly participated and rich discussion.

In the first focus group two of the participants had direct experience of severe labour exploitation and the third one had a vast knowledge of situations of labour exploitation in the sector. In the second focus group all participants had experienced severe labour exploitation.

## 2.3. Difficulties / constraints during fieldwork

Several difficulties were encountered during fieldwork.

One of these difficulties was related to the (lack of) capacity of part of the gatekeepers to identify potential participants. A total of 23 entities were initially identified as mediators and/or facilitators for the recruitment of interviewees but only five of those were actually able to do so. In some cases, the gatekeepers could not identify any person to participate since there was no one, from their knowledge, who had experienced severe labour exploitation. In other cases, although the research team had done all the efforts to contact and to obtain a reply regarding the cooperation request, no answer was obtained from the entities. In some further cases, taking into account the profile of some of our gatekeepers, they do not in fact have contact with individual workers despite the relevant work done in this field. This led to the

search for new gatekeepers, in order for the research team to be able to meet the foreseen number of participants.

Other constraints were related to the conduction of the interviews. Although in a small number of cases, the interviews either had to be rescheduled or at the end did not take place (due to different reasons, namely: the potential interviewee never showed up and the research team and/or the gatekeeper lost contact with him/her; the occurrence of an unexpected health problem in the potential interviewee's family). This was more problematic, in terms of time and money, when the interviewer has had to move to another part of the country to conduct the previously scheduled interview. Only two of the identified potential respondents refused to be interviewed.

Finally, as said before, although it was a purpose of the research to include participants who are EU nationals in the sample, this was not possible.

As regards the focus groups, several constraints were faced. Most of these stem from the difficulties in finding eligible participants from a certain sector, willing and available to participate in a focus group, at the same day and hour, and sharing a common language.

In spite of these difficulties, regarding the first focus group, all the planning has been made with two gatekeepers in order to secure the participation of at least four migrant female domestic workers. Although a total of five domestic workers had agreed and confirmed participation, due to different reasons, finally the group was composed by three women. It is important to highlight that the reason why the other women did not attend are related to their vulnerability at work. The potential participants were contacted the day before and on that same day morning and everything seemed to be perfectly arranged. However, one of these women had to work on that day and, at the end, she was only able to leave her employer's house (in the surroundings of Lisbon and depending on public transportation) much later than expected; when she eventually managed to arrive, the focus group was already finished by then. As to the other women, one of her acquaintances died and she had to go to the wake that Saturday afternoon; when she managed to arrive, although she was willing to cooperate, she said not to have time enough to stay and, instead of participating in the focus group, give an interview (according to our alternative suggestion). When the research team contacted her again to schedule the interview, she was away from Lisbon: her employers left to the Algarve for holidays and unexpectedly told her that she had to accompany them.

In relation to the second focus group, two local gatekeepers identified, each, three male construction workers willing to participate. The contacts with the potential participants and the scheduling of the session were done by the gatekeepers. The research team was always in close articulation with the gatekeepers to ensure that all participants were duly contacted and none had given up. Special attention was given to the scheduling of the focus group according to the convenience of the participants, and all of them had agreed on the final time and place. Nevertheless, on the very day of the focus group discussion, at the time scheduled, only three out of the six foreseen participants showed up. The reasons why the others did not attend are not known.

## **2.4. Overview of the conditions of the interviews and focus groups conducted**

The conditions for all the interviews and focus groups conducted were very good.

Some gatekeepers made available their own facilities to the interviews to be conducted. In all of these situations, the interviews took place in a private and safe environment in a room made available by the gatekeeper. In some cases, when the participant expressed this preference,

the interviews took place at CESIS' facilities. Also in these situations the safety and privacy conditions were fully granted.

In one case, the interview was conducted in a coffee shop close to the interviewee's home. The place was chosen by the interviewee. There were good conditions with regard to safety and privacy but there was some ambient noise. However the noise did not interfere.

The interviewees, in most cases, showed collaborative attitude, were talkative and helpful. However, in two specific situations, the interviews were particular difficult. One of these regards a woman who showed some fear to respond to some questions and of public exposure of her personal situation; she had to be reassured more than once about anonymity and confidentiality. In the other situation the interviewee was not very talkative nor gave extensive responses which made it difficult to get detailed information.

In general, interviewees showed a high level of trust and openness. Some of them clearly expressed their willingness to share their experiences and opinions.

In terms of duration, the interviews had an average duration of 61.6 minutes, with a minimum of 32 minutes and a maximum of 116 minutes. There were a total of eight short interruptions in five interviews. Concerning the focus groups, the first one lasted for 67 minutes, and the second one lasted for 61 minutes. During either of the sessions no interruptions occurred.

### 3. Legal and institutional framework

#### 3.1. Legislation/policy

The legislation that criminalises severe forms of labour exploitation is mainly integrated in the frameworks of human trafficking for the purposes of labour exploitation (Article 160(1) and (2) of the Penal Code<sup>3</sup>) and employment of illegally staying third-country nationals in particularly exploitative working conditions (Article 185-A(3) of the Immigration Law<sup>4</sup>). Beyond this, the criminalisation of behaviours that constitute severe forms of labour exploitation can be found scattered over the Penal Code, in particular in Articles 152-A (mistreatment), 152-B (violation of security rules) and 159 (slavery), and in the Labour Code,<sup>5</sup> Articles 82 (crime for misusing the labour of a minor) and 324 (lack of timely payment of remuneration, in some cases). This may be one of the reasons why, in the caselaw under research, severe labour exploitation appears in reference to crimes of human trafficking or slavery. This situation applies only to third-country nationals and not to EU nationals, who the reality shows to be victims of severe forms of labour exploitation as well.

The Article 90-A(2) of the Penal Code establishes that legal persons and equivalent entities committing the crimes considered in the Article 11(2) of the same Code, which include crimes that may constitute severe forms of labour exploitation, can be punished with – in addition to the main penalties – the penalties of prohibition of exercising the activity, exclusion from entitlements to public benefits, aids or subsidies, closure of establishment, and public announcements of the sentence.

The Public Procurement Code and related legislation did not undergo any change regarding the issues under examination since 2015.

Following the Government's Law Proposal 86/XIII,<sup>6</sup> several amendments to the Immigration Law have been approved at the national parliament leading to the adoption of the Law 102/2017,<sup>7</sup> which includes the transposition of the Directives 2014/36/EU, 2014/66/EU and 2016/801/EU. One of the amendments is the extension of the field of application of penal provisions established in the Immigration Law to seasonal workers and to workers transferred within the company, as detailed in Annex 1.

Other legal changes have recently occurred, although not of criminal nature, aiming to – in its own terms – *combat the modern forms of forced labour*. This is the case of the Law 28/2016,

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<sup>3</sup> Portugal, Penal Code (*Código Penal*), 15 March 1995, with later amendments. Updated version available at: [www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=109&tabela=leis](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis). All hyperlinks were accessed on 15 September 2017.

<sup>4</sup> Portugal, Law 23/2007 on the legal regime of entry, permanence, exit and removal of foreigners from national territory (*Lei n.º 23/2007 que aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional*), 4 July 2007, with later amendments. Updated version available at: <https://dre.pt/web/guest/pesquisa/-/search/107781373/details/normal?q=Lei+n.%C2%BA%2059%2F2017>.

<sup>5</sup> Portugal, Labour Code (*Código do Trabalho*), 12 February 2009. Updated version available at: <https://dre.pt/web/guest/pesquisa/-/search/108001409/details/normal?q=Lei+n.%C2%BA%2073%2F2017>.

<sup>6</sup> Portugal, Government's Law Proposal 86/XIII (*Proposta de Lei 86/XIII Assembleia da República*). Available at: [www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=41399](http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=41399).

<sup>7</sup> Portugal, Law 102/2017 making the fifth amendment to the Law 23/2007 of 4 July which approves the legal regime of entry, permanence, exit and removal of foreigners from national territory, and transposition of the Directives 2014/36/EU of 26 February, 2014/66/EU of 15 May, and 2016/801/EU of 11 May (*Lei n.º 102/2017 que procede à quinta alteração à Lei n.º 23/2007, de 4 de julho, que aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional e transpõe as Diretivas 2014/36/UE, de 26 de fevereiro, e 2014/66/UE de 15 de maio de 2014, e 2016/801, de 11 de maio de 2016*), 28 August 2017. Available at: <https://dre.pt/web/guest/pesquisa/-/search/108063583/details/normal?q=Lei+n.%C2%BA%20102%2F2017>.

which introduced changes in the Labour Code, as well as in the legislation concerning safety and health at work and concerning private employment agencies.<sup>8</sup>

In brief, the Law 28/2016 expanded the scope of liability for non-compliance with the legal provisions related with the exploitation of workers. Thus, the temporary work agency, the user of this work and its managers, administrators or directors and the companies in a relation of cross-shareholdings, control or group, as well as the contractor and the owner of the construction project, company or agricultural property and its managers, administrators or directors and companies with cross-shareholdings, are all jointly liable for the worker's credits and corresponding social contributions, as well as for the payment of the due fines (Articles 174(2) and 551(4) of the Labour Code). These organisations or persons are also jointly liable for the violation of legal provisions regarding the safety and health of temporary workers, workers occasionally placed or workers for service provider companies, including payment of the due fines, if the violation is committed during the exercise of activity in their premises (Law 102/2009, 10 September, Article 16(5)).

The same occurs with the juridical regime of exercise and licensing of private job placement and temporary work agencies, which now establishes that the user, as well as its managers, administrators or directors and companies in a relation of cross-shareholdings, control or group, are jointly liable for the non-compliance of the temporary work agency with legal contributions and obligations regarding workers and for the payment of the due fines (Decree-Law 260/2009, 25 September, Article 13(5)).

Concerning the prevention of human trafficking and the exploitation of foreign workers in an irregular situation, it is also important to mention the Resolution of the Council of Ministries 104/2017, which approved the National Strategy of Integrated Border Management.<sup>9</sup>

### 3.2. Labour exploitation and institutional settings

With regard to the legal framework regulating the authorities responsible for monitoring and overseeing the legislation that forbids severe forms of labour exploitation, this competence falls primarily on the Authority for Working Conditions (*Autoridade para as Condições de Trabalho*, ACT) and the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras*, SEF). However, there are other public bodies implied in this control at a second level such as the Institute of Social Security (*Instituto da Segurança Social*, ISS), responsible for controlling compliance with the legal provisions on social security contributions by employers and workers, and the Tax Authority (*Autoridade Tributária*, AT) in cases of undeclared work.

To the extent that severe labour exploitation constitutes a crime, the bodies of criminal police – National Republican Guard (*Guarda Nacional Republicana*, GNR), Public Safety Police

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<sup>8</sup> Portugal, Law 28/2016, on combatting the modern forms of forced labour by amending the, Law 7/2009, 12 February, amending the regime of promotion of safety and health at work, Law 102/2009, 10 September, and amending the regime of exercise and licensing of private job placement and temporary work agencies, Decree-Law 260/2009, 25 September (*Lei n.º 28/2016 relativa ao combate às formas modernas de trabalho forçado, procedendo à alteração do Código do Trabalho, Lei n.º 7/2009, de 12 de fevereiro, à alteração do regime da promoção da segurança e saúde no trabalho, Lei n.º 102/2009, de 10 de setembro, e à alteração do regime do exercício e licenciamento das agências privadas de colocação e das empresas de trabalho temporário, Decreto-Lei n.º 260/2009, de 25 de setembro*), 23 August 2016. Available at: <https://dre.pt/web/guest/pesquisa/-/search/75170436/details/normal?q=+Lei+n.%C2%BA%2028%2F2016%2C%20de+23+de+Agosto>.

<sup>9</sup> Portugal, Resolution of the Council of Ministries 104/2017, approving the National Strategy of Integrated Border Management (*Resolução do Conselho de Ministros n.º 104/2017 que aprova a Estratégia Nacional Integrada de Fronteiras*), 17 July 2017. Available at: <https://dre.pt/web/guest/home/-/dre/107693728/details/maximized?serie=l&day=2017-07-17&date=2017-07-01>.

(*Polícia de Segurança Pública, PSP*) and Judiciary Police (*Polícia Judiciária, PJ*) – have competences of investigation on the matter.

These authorities sometimes act jointly, a situation that has been boosted by the signing of collaboration protocols and by measures included namely in the Strategic Plan for Migration 2015-2020 (*Plano Estratégico para as Migrações 2015-2020, PEM*) and the Plan to Combat Human Trafficking 2014-2017 (*Plano de Combate ao Tráfico de Seres Humanos 2014-2017, PCTSH*). It is not yet possible to assess the impact of these Plans. The final evaluation report of the PCTSH was not yet published. As to the PEM, an implementation report was published for the years 2016-2017, including the execution rates achieved in those two years. Although in criminal situations of labour exploitation of migrants such collaboration derives from the law, for instance the Immigration Law, this is not always the actual practice, as mentioned by the Inspector General of Labour on a recent television report about migrants working in agricultural properties.<sup>10</sup>

### 3.3. Victim support

The protection of victims of crimes is regulated mainly by the Law 130/2015 of 4 September,<sup>11</sup> which changed the Code of Criminal Procedure (*Código do Processo Penal*) and approved the Standing of Victims (*Estatuto da Vítima*).

According to this law, the Public Prosecutor informs the victims of violent crimes about the possibility of access to compensation, as well as about the institutions that can provide them with support. There are numerous public, private and mixed bodies that have the protection of victims of crime as their mission. Concerning the crime of exploitation of migrant workers, a large part of these bodies use systems of online reporting and provide legal advice, as well as psychological and other type of counselling in the case of particularly vulnerable victims.

The trade unions and the migrant associations officially recognised by the ACM are entitled to present a complaint against employers that violate the applicable legal provisions and, if foreseen in their respective statutes and upon agreement of the victim, represent the victim legally.

### 3.4. Risk management

Risk management systems appear not to be institutionally set in Portugal, based on the answers by the Authority for Working Conditions (*Autoridade para as Condições de Trabalho, ACT*) and the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras, SEF*) when asked about such matters. This does not mean that priorities of inspective intervention are not defined, especially by the ACT, as it happens with vulnerable workers including

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<sup>10</sup> RTP – Rádio e Televisão de Portugal, *Linha da frente*, 8 July 2017.

<sup>11</sup> Portugal, Law 130/2015 that amends the Code of Criminal Procedure and approves the Standing of Victims, transposing the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA of 15 March 2001 (*Lei n.º 130/2015 que procede à alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro 2001/220/JAI do Conselho, de 15 de março de 2001*), 4 September 2015. Available at: <https://dre.pt/web/guest/pesquisa/-/search/70186239/details/normal?q=Lei+n.%C2%BA%20130%2F2015>.

immigrants<sup>12</sup> and those in specific occupations.<sup>13</sup> It is therefore likely that, while not expressly established, a greater concern exists regarding control in regions and activity sectors with a frequent use of migrant labour force, such as particular types of agricultural properties, namely in the region of Alentejo.

Mention should be made to the fact that the Strategic Plan for Migration 2015-2020 (*Plano Estratégico para as Migrações 2015-2020*, PEM)<sup>14</sup> encompasses a risk management approach, including in one of its priority axis (I) several measures (20 to 25) aiming at preventing labour exploitation of migrants. As an example, since all measures are equally important in terms of risk management (information on rights to migrants and foreign employers, development of instruments to support integration into the labour market, etc.), we refer to Measure 20: "Prevention and combat to the exploitation of use and hiring of foreigners in an irregular situation for the exercise of labour activity". This measure includes three actions: to create a network of national and regional contact points to combat the exploitation of illegal migrant workers; to intensify the combat to the use of illegal workers through the reinforcement of the inspection activities to the employers (with a target of 2,000 inspection operations per year); and to promote information and awareness-raising actions with the local networks for the integration of migrants, in the areas of labour relations, and safety and health at work. Several ministries, besides the Authority for Working Conditions (*Autoridade para as Condições de Trabalho*, ACT), the High Commission for Migration (*Alto Comissariado para as Migrações*, ACM, I.P.), the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras*, SEF), the Commission for Equality in Labour and Employment (*Comissão para a Igualdade no Trabalho e no Emprego*, CITE) and the Commission for Citizenship and Gender Equality (*Comissão para a Cidadania e a Igualdade de Género*, CIG), are responsible for the implementation of these measures.

### 3.5. Court cases

The caselaw databases of the Higher Courts<sup>15</sup> – Supreme Court of Justice (*Supremo Tribunal de Justiça*), Constitutional Court (*Tribunal Constitucional*) and Courts of Appeal (*Tribunais da Relação*) – do not include a substantial number of judgements between 2014 and 2017 about criminal forms of labour exploitation. The three judgements in this circumstance are qualified as crimes of slavery and human trafficking.

Concerning slavery, the judgement of the Court of Appeal of Oporto, on 9 December 2015,<sup>16</sup> pertains to the appeal in a case that is similar in all respects to the one described in Annex 1: an organised group lured Portuguese nationals in need, due to the economic crisis, to work in Spain in the sector of agriculture. The main argument for the appeal was the same too: incorrect qualification of the crime as slavery. According to the Court of Appeal, which did not uphold the appellant's claim, the crime of slavery (Article 159(a) of the Penal Code) does not consist only in the exploitation of a human being by another: the interest legally protected by

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<sup>12</sup> Authority for Working Conditions (2015), *Referencial da atividade inspetiva*. Available at: [www.act.gov.pt/pt-PT/crc/PublicacoesElectronicas/Documents/Referencial%20da%20atividade%20inspetiva.pdf](http://www.act.gov.pt/pt-PT/crc/PublicacoesElectronicas/Documents/Referencial%20da%20atividade%20inspetiva.pdf).  
Authority for Working Conditions (2017), *Estratégia ACT – 2017-2020*. Available at: [www.act.gov.pt/pt-PT/SobreACT/DocumentosOrientadores/PlanoActividades/Documents/Estrategia%20ACT\\_2017-2020.pdf](http://www.act.gov.pt/pt-PT/SobreACT/DocumentosOrientadores/PlanoActividades/Documents/Estrategia%20ACT_2017-2020.pdf)

<sup>13</sup> In their answers to our questions, the ACT refers to intervention in specific times of the year in the sectors of agriculture, silviculture and tourism.

<sup>14</sup> High Commission for Migration (2015), *Plano Estratégicos para as Migrações 2015-2020*, ACM, Lisboa. Available at: [www.igac.gov.pt/documents/20178/609332/PEM/375ddb56-6760-44d4-8b8e-1efb22578d45](http://www.igac.gov.pt/documents/20178/609332/PEM/375ddb56-6760-44d4-8b8e-1efb22578d45).

<sup>15</sup> Institute for Justice Financial and Equipment Management (*Instituto de Gestão Financeira e Equipamentos da Justiça*, IGFEJ), Legal-Documental Bases (*Bases Jurídico-Documentais*): [www.dgsi.pt](http://www.dgsi.pt).

<sup>16</sup> Portugal, Court of Appeal of Oporto (*Acórdão do Tribunal da Relação do Porto*), Process 9238/13.0TDPRT.P1, 9 December 2015, available at: [www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fd/c44ad16ef45723a580257f9300343081?OpenDocument](http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fd/c44ad16ef45723a580257f9300343081?OpenDocument).

the incrimination is the interest of the society in recognising and safeguarding the individual personality of every human being.

As for the crime of human trafficking for the purposes of labour exploitation, the only judgement found took place at the Court of Appeal of Évora, on 20 January 2015.<sup>17</sup> In this case, the defendants, of Romanian nationality, recruited people in Romania to work in Portugal, in agricultural activities, under the promise of a work contract and a remuneration between 400 and 500 Euros per month, as well as food, transportation and accommodation. For this purpose, they created a company that negotiated with farmers the conditions in which the work was to be provided. When they arrived in Portugal, the workers found that the food and the accommodation conditions were degrading. They were also required to pay the recruiters for the airplane tickets, the transportation and the electricity, and did not receive any money after those deductions. In addition, they were mistreated whenever they complained or asked to change jobs.

Following an inspection by the ACT to an agricultural property, one of the defendants, as the managing partner of the aforementioned company, was notified to present this authority the documents concerning the working relations and conditions of the thirty persons that were working at the property under the supervision and direction of the company, otherwise he would be committing the crime of qualified disobedience (Article 547(a) of the Labour Code and Article 348(1) and (2) of the Penal Code). He never complied with such request.

Condemned by the first instance court for the crime of human trafficking, the defendants appealed that decision, namely arguing that the court made an incorrect assessment on a matter of fact due to the absence of proof of the events regarding the participation of all defendants in the crime of human trafficking, regarding the vulnerability of victims, and regarding the acts of violence, kidnap or threat (Article 160(1)(a) and (d) of the Penal Code).

According to the Court of Appeal, the proofs presented during the trial not only permitted but indeed required the decision made by the first instance court. The Court of Appeal added that, considering that the Article 26 of the Penal Code orders the punishment as an author of whoever takes a direct part in the execution of the fact by agreeing or collaborating with others, the verification of this joint execution does not require that the agents intervene in all of the criminal acts that are organised or planned with the goal of producing the typical intended result. It is sufficient that the activity of each agent is a fraction of the aggregate action, as long as this fraction is indispensable to produce the end and the result aimed by the agreement. The principle of reciprocal objective imputation applies in the sense that each participant is accredited for the typical fact regardless of the actual fraction of the *iter delictivo* committed by the individual. On the other hand, the “special vulnerability of the victim” (*especial vulnerabilidade da vítima*, Article 160(1)(d) of the Penal Code) must be interpreted as including all situations in which the person at stake does not have any other real or acceptable choice other than submitting herself or himself to the abuse, being the notion of acceptability grounded on criteria of reasonableness and humanly acceptable standards. In cases of illegal emigration, the situation of vulnerability can result from the precarious or illegal permanence in a foreign and culturally strange country. On these grounds, the appeal was not upheld.

### 3.6. Promising practices

Along the conduction of this fieldwork research, focusing on the experiences and perspectives of migrant workers on severe labour exploitation in Portugal, one existing practical measure

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<sup>17</sup> Portugal, Court of Appeal of Évora (*Acórdão do Tribunal da Relação de Évora*), 150/12.0JAFAR.E1, 20 January 2015, available at: [www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/7bb927db2cac0a4d80257de10058253a?OpenDocument](http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/7bb927db2cac0a4d80257de10058253a?OpenDocument).

emerged as a promising practice to tackle severe labour exploitation and support foreign victims, in particular those who are victims of trafficking in human beings.

This regards the so-called EME (Multi-disciplinary Specialised Teams, *Equipas Multidisciplinares Especializadas*). The first EME were created in 2012. The five currently existing regional EME cover Mainland Portugal and provide technical support, reception, support, monitoring and referral to signalised victims of trafficking in human beings. These regional teams are implemented and operate under the coordination and supervision of a Portuguese NGO, the Family Planning Association (*Associação para o Planeamento da Família*, APF). They bring together, at regional-level networks, governmental and non-governmental bodies working directly or indirectly with potential victims of trafficking in human beings, including the police.

The funding is secured by the Secretary of State for Citizenship and Equality.

The EME, and the regional networks, articulate with national-level mechanisms and services, namely the Network for Support and Protection of Victims of Trafficking in Human Beings (*Rede de Apoio e Proteção às Vítimas de Tráfico*, RAPVT). This national-level Network for cooperation and information sharing, and aiming at the prevention, protection and reintegration of victims of trafficking in human beings, is in operation since June 2013. It was created via a protocol signed between the Commission for Citizenship and Gender Equality (*Comissão para a Cidadania e a Igualdade de Género*, CIG), as coordinator of the National Action Plan Against Trafficking in Human Beings, and 22 public and civil society organisations.

## 4. Risk factors for severe labour exploitation

In what concerns the risk factors for severe labour exploitation four recurring themes arose during the interviews and focus groups:

- the irregular situation in the country as the most prevalent risk for severe labour exploitation of migrant workers;
- the economic vulnerability of migrant workers and their urgent need to get an income making them accept any kind of work, regardless of the working conditions;
- the expectation of a better future eventually compromising the present: migrants tend to conform to situations of severe labour exploitation in order to try to improve their own and their family's wellbeing and living conditions in the future;
- the search for profit by the employers as an overarching goal, thus compromising respect for workers' rights.

### 4.1. Reasons for leaving country of origin

Reasons for leaving country of origin	Migrants in an irregular situation	Seasonal workers	Domestic workers	Other	TOTAL
Poverty / Hard living conditions in the country of origin	5/9	4/5	2/5	1/1	12/20
Education (seeking for better education)	2/9	2/5	-	-	4/20
Health care	1/9	-	1/5	-	2/20
Family reunification reasons	2/9	-	2/5	-	4/20

Poverty as a reason to leave the country of origin was explicitly mentioned only by one woman from Cape Verde, referring in particular to her family's situation. In her narrative, this woman also spoke about the difficulties that, in general, people are facing in her country:

*I left Cape Verde because you don't have these living conditions in Cape Verde. Practically all of the young people who finish school are stopped. They can't... The university is expensive, we don't have the conditions to go there. There are troubles with work, it's very difficult to find jobs at the moment. My relatives don't have good conditions. So I wanted to look for a job, but I couldn't find one and this is the reason why I left.*

*(Eu saí de Cabo Verde porque Cabo Verde não tem estas condições de vida. Praticamente, todos os jovens que terminam a escola estão parados. Não têm como... Universidade é cara, não temos condições para ir. O trabalho não está bom, há muita dificuldade em encontrar os empregos. Os meus familiares não têm as condições. Então, eu queria procurar emprego, só que não encontrei e essa é a minha razão para sair fora.)*

(Portugal, female interviewee from Cape Verde, domestic work/homecare migrant in an irregular situation at the time of exploitation)

However, not necessarily poverty<sup>18</sup> but difficulties regarding living conditions in the countries of origin are the main reason for migration, being referred by more than half of the interviewees. Hard living conditions are mentioned in all the groups considered but they are especially mentioned by seasonal workers (four out of a total of five), all of them coming from Nepal, as well as by migrants in an irregular situation. In this last group the migrants that identify hard living conditions in the country of origin as a reason to leave came from Cape Verde, Brazil, Ukraine and Nepal.

The 2015 earthquake in Nepal was mentioned by one interviewee as an event that made it more difficult to find a job and to ensure the means of living in that country. Three other Nepalese interviewees highlighted difficulties in the access to education, especially to higher education.

Education *per se* is the second main reason for leaving, being referred by one fifth of the interviewees (two migrants in an irregular situation and two seasonal migrants). Among these, for the three male interviewees coming from Asia, Portugal was not their first country of destination, rather the last stop in a journey, motivated by the wish to get a higher education degree, that started in other countries - Russia, Finland and Switzerland, respectively -, where these young men got a scholarship. However, none of them managed to complete their course, and diverse reasons brought them to Portugal.

For two interviewees coming from Africa, from countries that were former Portuguese colonies in that Continent, the need for health care and specific treatment was the main reason to move.

Family as a reason to leave was mentioned by one fifth of the interviewees, two domestic workers and two migrants in an irregular situation. They came with their family or they came in order to join their relatives. Family as a negative push factor is also present in one of those people's stories, for whom a painful relationship with her partner gave her the reason to spend some period of time out of her country.

Although these four cases concern women, it would be hasty to conclude that family reasons take on a greater importance among women than among men. In fact, family reasons are transversal to most of our interviewees, both women and men. If we consider those interviewees who were pushed from their countries of origin by hard living conditions, most of them, even though abroad, assume themselves as the support of their families still at home. Furthermore, the need to provide for the wellbeing of family members is also a frequent reason to leave.

It is clear from the interviews that migration is not as much a strategy of personal immediate survival but rather a path to being able to care for the family members who stayed, and paving the way to a better future:

*I left there to look for a better life, mainly to help my mother and father. I also have a son (...) I worked in Cape Verde, worked and studied, but the salary was very low. I could not support my mother, my son, myself ... and we were 6.*

*(Saí da lá para procurar uma vida melhor, principalmente para ajudar a minha mãe e o meu pai. Também tenho um filho (...)) Eu trabalhava em Cabo Verde, trabalhava e estudava, mas o salário era muito pouco. Não*

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<sup>18</sup> Poverty is a relative phenomenon, thus the interviewees' perceptions about what is to be poor in their country of origin have for sure influenced their reported views at this level.

*dava para sustentar a minha mãe, o meu filho, a mim mesma...e éramos 6.)*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

*In Nepal I think that everyone is expecting a more comfortable life and more opportunities, not only for us but for the families and especially for the children. In Nepal education is too expensive and normally people do not have access to higher education and with no education there is no future.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

## 4.2. Reasons for moving to Portugal

Reasons to come to Portugal	Migrants in an irregular situation	Seasonal workers	Domestic workers	Other	TOTAL
Having family in Portugal	6/9	-	4/5	1/1	11/20
Good policies in what concerns migrants inclusion	1/9	4/5	-	-	5/20
Did not choose Portugal; was guided by a recruiting agency	1/9	3/5	-	-	4/20
Health agreement between Portugal and the country of origin	1/9	-	1/5	-	2/20
Holidays	1/9	-	1/5	-	2/20

Moving in order to join relatives already living in Portugal or moving with the family is the most frequent reason to come to the country. This was mentioned by more than half of the interviewees. This reason is identified by the majority of the domestic workers (four out of five) and by most (six out of nine) of the migrants in an irregular situation. All of these people are coming from Portuguese speaking African countries or from Brazil, countries with close relationships with Portugal. Most people (14 in total) are in Portugal for less than 5 years, that is, since 2013. There are, however, four situations of long-term stays, from 10 years up to 39. These last ones are mainly related to the situations of people who already had relatives or came with them to Portugal (mentioned by three interviewees).

For two interviewees, migration to Portugal was not exactly planned and some degree of unpredictability can be found, since they first came on holidays and finally decided to stay in the country.

In any case, the presence of other family members in Portugal always works as a pull factor; and in some situations these play a guidance role to facilitate the integration of the newcomers in the labour market (mentioned by three interviewees). In every situation, relatives who came

first are an important source of different forms of support, namely providing for accommodation.

The second main reason for coming to Portugal, pointed out by one fifth of the interviewees, mainly by seasonal workers, relates to the perceived existence of good immigration policies in the country. Two of these men, coming from Asia, are here because they were told that in Portugal it was possible to get a job without a residence permit, understood as that it would be easy to start working and to have a work contract in order to subsequently get the legal documents. On the other hand, Portugal represents the 'European dream' and, once having got a residence permit, they would secure their legal permanence in Europe, just like one of the interviewee responded when asked about the reason to move from France to Portugal:

*To make the residence permit, of course. To work, pay tax and get to stay legal and stable in Europe.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

However, this 'European dream' was 'sold' to some of them back home. As a matter of fact, a total of four interviewees, one migrant in an irregular situation and three seasonal workers report having paid to a company or to an individual person when they were still in Nepal in order to get the necessary support to prepare their migration path. One of them is particularly clear when he mentions the sort of interaction with the man who took him from Nepal to India, and later to Europe:

*He just told me, "You will get more money, you will have a good life in the future, you will have this and that". He kept saying that. So when I got to India he demanded money. When we got to Russia, he demanded more money. Then in Finland he asked me for extra money to get to Portugal... I gave him 10 thousand Euros in total.*

(Portugal, male interviewee from Nepal, agriculture, migrant in an irregular situation at the time of exploitation)

In these cases Portugal was not as much a conscious choice, rather an opportunity to come to Europe.

Also, these immigrants, as well as those who came to Europe in order to get an university degree, show that, if economic factors are still important drivers for migration, there are new flows led not by the poorest ones but by those who are in a position to dream about the future and to pay for an opportunity that may bring them a higher status and better living conditions.

Independently of push and pull factors, for a great part of the interviewees, underlying migration is mostly the hope for a better life, a better future:

*I expected to have a degree, to have a job and good money. To have a good life...*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

Although positive in itself, and an element of self-motivation, this wish can also become a risk factor contributing to labour exploitation at present.

### 4.3. The risks associated to certain economic sectors

Working in sectors such as (seasonal) agriculture, domestic service and construction involves the prevalence of working conditions that may increase the risk for severe labour exploitation. This is analysed in detail, under diverse approaches, throughout this report.

Nevertheless, although the fact of being an immigrant is often associated to occupations in these sectors, being a foreign/migrant was not specifically mentioned in the interviews or in the focus groups as a contributing factor to labour exploitation.

### 4.4. The risk of not having a legal residence / status

The inexistence of a legal residence / status is, in general, the most important risk factor for severe labour exploitation of immigrants.

When first arriving into the country there are two frequent situations among the interviewees, as shown in the table below:

- Having a resident permit, or a work permit in the case of seasonal workers (6/20). In both cases permits are temporary and have to be renewed.
- Coming into the country with a tourist visa (6/20), which does not allow working legally.

The seasonal workers who entered Portugal with a work permit (in three cases) correspond to the cases in which documentation was arranged by (i.e. bought to) companies or individual persons back home. As mentioned before, all these cases are signalised as victims of trafficking in human beings.

#### Interviewees according to the type of permit – First arrived and present time

Type of permit, documents or status	Number of interviewees First arrived	Number of interviewees Present time
I did not need a residence or work permit (e.g. EU nationals)	-	-
A residence/work permit	6/20 Migrants in an irregular situation – 19/9 Seasonal workers – 3/5 Others – 1/1	10/20 Migrants in an irregular situation – 2/9 Seasonal workers – 4 /5 Domestic workers – 4/5
I came as a child on parents' papers	1/20 Domestic workers – 1/5	-
Student visa	2/20 Migrants in an irregular situation – 1/9 Seasonal workers – 1/5	-
Tourist visa	6/20 Migrants in an irregular situation – 3/9 Domestic workers – 3/5	-

<sup>19</sup> The residence permit was valid to another EU country.

<b>No permit (without papers)</b>	3/20 Migrants in an irregular situation – 2/9 Seasonal workers – 1/5	9/20 Migrants in an irregular situation – 7/9 Seasonal workers – 1/5 Domestic workers – 1/5
<b>Other</b>	2/20 Migrants in an irregular situation – 1/9 Domestic workers – 1/5	1/20 Other – 1/1

Currently, the majority of the interviewees has a work or a residence permit (and one managed to get dual nationality), but nine are still in an irregular situation.

Some constraints and contradictions of the Portuguese legal system regarding immigrants' regularisation procedures came up both in the interviewees and in the focus groups:

- Long periods of time for regularization. One interviewee testify clearly the long waiting time for regularization since, after having submitted the request for a residence permit ten months ago, he still doesn't have it. As far as he can tell, this delay is not due to any missing or incorrect step in his submission:

*The documents are fine but the paper card is delaying... they [the Immigration and Borders Service] are fooling people. I showed them my work contract; they looked at my taxes; everything... social security... They said, "In four months you will have a card". It's ten months [ten months have passed] but I don't have it. And if I call and ask, they say, "Oh, you must wait". "How long I must wait?" "We don't know." So who will know? Maybe I must pray [to] God to know that.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

- The need to have a work contract in order to get the residence permit *versus* the illegality of giving work to an irregular migrant:

*I think here most of the problems of people like me is the following: I can't work because I'm not legal, but to get legal I need a work contract; but employers cannot hire an illegal person. This is like going in circles [‘pescadinha de rabo na boca’, a Portuguese idiomatic expression]... how can you do it? Actually I'd like to ask an expert, a minister or such, to explain me how you sort out this problem. I didn't enter the country illegally. I entered legally and I want to live here and I want to work, I want to pay my tax and social security contributions, I want to do everything, and I can't.*

*(Acho que a maior parte dos problemas de pessoas como eu aqui é este: eu não posso trabalhar porque não estou legal, mas para legalizar-me eu preciso de contrato de trabalho; mas a pessoa não pode contratar uma pessoa ilegal. Essa pescadinha de rabo na boca... como se faz isso? Eu até gostava de perguntar a alguém que percebe disso, um ministro ou assim, que me explique como se resolve esse problema. Eu não entrei no país ilegalmente. Entrei legal e quero viver cá e quero trabalhar, quero fazer os meus descontos, quero fazer tudo, e não consigo.)*

(Portugal, female interviewee from Ukraine, cleaning, migrant in an irregular situation at the time of exploitation)

In the discussion of the focus group with construction workers, this kind of going in circles situation was also mentioned. According to all participants, this is a situation in which many foreign workers, in the construction sector, find themselves.

- According to interviews and/or focus group participants not all the occupations are seen in the same way by the authorities. One interviewee points out that when she finally obtained a work contract, she was informed by the staff of the SEF that her application might be rejected because the employer was a private household, a type of arrangement that the authorities often suspect to be fraudulent. She then gave up applying for the permit on the basis of employment and instead married her Portuguese partner, thereby securing her legal status in this country. This particularly situation highlights other vulnerabilities of migrant women:

*My partner said, "just forget it, that's over [trying to obtain a residence permit on the basis of a work contract], let's take care of the paperwork, let's get married and that's it". But I didn't want to marry because of the papers. I wanted to marry one day according to my own wishes, not for papers. But that's alright, I'm here, I'm with him, we got married and everything was sorted out fine. And the people that don't have anyone to get married to, what about them? That's very sad.*

*(O meu marido disse, "então esquece, acabou-se isso, vamos meter os papéis, vamos casar-nos e já está". Mas eu não queria casar-me por causa dos papéis. Eu queria casar-me um dia como eu queria, não por causa dos papéis. Mas está bem, eu estou aqui, estou com ele, casámos e resolveu-se tudo bem. E as pessoas que não têm com quem casar, então? Isso é muito triste.)*

(Portugal, female interviewee from Ukraine, cleaning, migrant in an irregular situation at the time of exploitation)

Also the first focus group, with women working in domestic service, mention this unequal treatment of domestic workers. Participants report that these workers are currently required by the SEF to include a copy of their employer's identity card in the application for a residence permit. However, some employers refuse giving a copy of their identity card and the worker is therefore unable to proceed with the application.

- The payment of fines. As it was mentioned in focus group 1, when the foreign worker is finally in possession of all documents necessary to apply for a residence permit, he/she is required by the SEF to pay a fine for the period during which he/she stayed in Portugal in irregular situation. The worker must pay this fine to proceed with the application, even if it was not his/her fault at all. This is a direct experience of participants 2 and 3 in this focus group.

#### 4.5. Language ability

More than half of the interviewees reveal a good or very good knowledge of Portuguese language (11 out of 20). Almost all of these are coming from Portuguese-speaking countries. However, seven interviewees came into the country without speaking or understanding the Portuguese language. All of the six interviewees that classified themselves as someone who did not speak the language when first arrived were victims of trafficking in human beings (five seasonal workers; one irregular migrant).

Some interviewees mention that they are currently learning Portuguese:

*Since last September I have been learning the Portuguese language (..) I have improved a lot and now I can communicate in Portuguese even if I do not know all the vocabulary.*

(Portugal, male interviewee from Bangladesh, retail, migrant in an irregular situation at the time of exploitation)

In general, language ability has been improving over time: at present every interviewee can speak Portuguese, even though six of them still have a very basic knowledge.

#### **Interviewees according to the level of knowledge of the language used in Portugal**

<b>Type of permit, documents or status</b>	<b>Number of interviewees First arrived</b>	<b>Number of interviewees Present time</b>
<b>Very basic</b>	-	6/20 Migrants in an irregular situation – 1/9 Seasonal workers – 5/5
<b>Basic</b>	2/20 Migrants in an irregular situation – 1/9 Domestic workers – 1/5	1/20 Migrants in an irregular situation – 1/9
<b>Good</b>	4/20 Migrants in an irregular situation – 2/9 Domestic workers – 2/5	4/20 Migrants in an irregular situation – 2/9 Domestic workers – 2/5
<b>Very good</b>	7/20 Migrants in an irregular situation – 4/9 Domestic workers – 2/5 Other – 1/1	9/20 Migrants in an irregular situation – 5/9 Domestic workers – 3/5 Other – 1/1
<b>Do not speak the language</b>	7/20 Migrants in an irregular situation – 2/9 Seasonal workers – 5/5	-

The lack of knowledge of the Portuguese language emerges from the interviews as an obstacle mainly for getting access to information and asking for help, as well as to a match between skills and jobs performed:

*For me now it is ok this kind of jobs because I do not know the Portuguese language, (....)...*

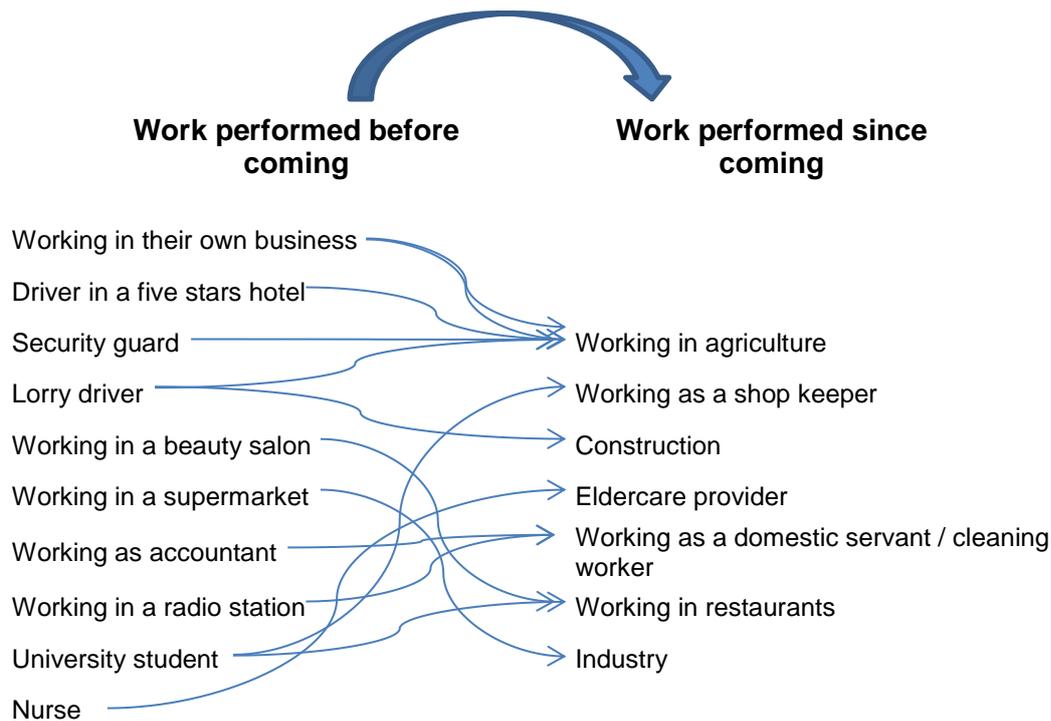
(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

*I can control the monitors, the CCTV [closed-circuit television surveillance systems], I can do that, but... I came here, and it's very difficult to find that job even if I have the experience because of the language. I can't speak Portuguese. Now I'm trying to learn Portuguese. Maybe if I get the chance I can do that job.*

(Portugal, male interviewee from Nepal, agriculture, migrant in an irregular situation at the time of exploitation)

#### 4.6. Skills, experiences and qualifications

A large majority, i.e. 14 interviewees consider that the kind of work that they have been performing in Portugal does not match their skills, qualifications or former experience. This situation is particular present among the following groups: seasonal workers group (5/5); “other” (1/1) and migrants in an irregular situation (5/9).



From the figure above, it is possible to conclude that agriculture is the sector with a larger number of interviewees who had no previous experience in this kind of work and among whom there are persons with higher qualification. However, having good education or qualifications did not stop them from being exploited.

Despite this mismatch between jobs performed and migrants' skills, generally speaking it is not perceived from the interviews a discontent about the work itself or about the tasks that they are carrying out in Portugal. The value of work and the willingness to accept any kind of job is underscored especially by the seasonal workers.

#### 4.7. Workers' perceptions of what caused the exploitation

When asked about the causes that led to labour exploitation, taking into consideration their own experience, the interviewees mention three main inter-connected factors: the employer's attitude, the economic vulnerability of migrant workers and their undocumented situation in the country.

Other factors were raised by fewer interviewees: the lack of knowledge of the Portuguese language (two interviewees); the isolation conditions faced by the some migrants in their work

place (one interviewee); the lack of information (one interviewee); the fact that the employer kept his personal documentation (one interviewee); and the inexistence of labour inspection in domestic service (one interviewee and participants in focus group 1).

### Interviewees according to risk factors perceived

Risk factor mentioned	Number of interviewees	Number of focus group participants
<b>Employer's attitude towards workers</b>	11/20 Migrants in an irregular situation – 5/9 Domestic workers – 3/5 Seasonal workers – 3/5	6/6
<b>Economic vulnerability of migrant workers</b>	11/20 Migrants in an irregular situation – 3/9 Domestic workers – 4/5 Seasonal workers – 4/5	3/6
<b>Irregular situation in the country</b>	13/20 Migrants in an irregular situation – 8/9 Domestic workers – 1/5 Seasonal workers – 4/5	6/6

Employers are often described as someone who does not respect workers, including foreigners (two interviewees); who wants to be obeyed (one interviewee); a despot (one interviewee); someone with such an aggressive behaviour that makes unthinkable the questioning of working conditions (two interviewees); and mainly as an opportunistic and greedy person that takes advantage of the vulnerability of migrants – five interviewees express this view.

According to the participants in the second focus group, the main interest of employers is to cut costs as much as possible. Their unwillingness to provide workers with decent working conditions is thus explained by the overarching goal of cutting costs, be it in respect to wages, social security contributions, or safety and health at work.

Even if not in a direct way, three interviewees reveal a feeling of being discriminated or a target of prejudice.

In both focus groups this issue was, however, raised with more emphasis. Participants in the focus group with domestic workers clearly mentioned the situation of workers being discriminated by employers due to their nationality and/or skin colour. In the second focus group, with workers from the construction sector, the participants spoke about racism among the employers. Two of the participants underscore the relevance of this factor, illustrating this with the common situation of employers and supervisors that do not trust black workers to carry out new tasks, or that prevent black workers from learning and acquiring new skills on the job, while behaving the opposite way towards white workers.

According to one interviewee (a female domestic worker) and to the participants in the second focus group, the economic crisis is frequently used by employers to justify the working conditions imposed on workers, especially in what concerns the inexistence of a work contract. When a contract is provided it is always a short fixed-term contract (3 months or less), which is considered insufficient by the immigration authorities to grant the foreigner a residence permit. One interviewee stresses that a high turnover is actually convenient for the employer

- workers who stay for longer in the company may become more demanding with respect to their rights (female interviewee, cleaning).

The picture drawn about the employers reveals a 'dream' about respect for human rights, as the words of one interviewee illustrate very well, a dream that, at the end, does not come true,:

*In Nepal, and in Asia, in general, there is this thinking about Europa: in Europa they are treating people in respect to human rights; they treat people in a nice way.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

On the other hand, as it was mentioned above, there are two main aspects concerning the migrants situation that are perceived as facilitating exploitation and abusive attitudes of employers: the precariousness and economic insecurity of migrant people, mainly of the newcomers; their irregular situation and lack of legal documents and permits (residence and/or work).

Migrants, particularly those who recently arrived to the country, need a job and a salary in order to be able to survive. Moreover the need for money is not just to their own survival but also to be sent back home. The idea of not having money to send home is too scary and this is one of reasons why migrants are tied to the conditions offered by the employer (according to one male interviewee working in agriculture (seasonal worker)). One of the interviewees (domestic worker) even refers that sometimes people have to sacrifice for the ones they love.

This extreme economic need, associated to an irregular situation, makes the possibility of having legal documentation a serious concern for everyone. One of interviewee refers to the importance of having legal documents and its consequences:

*When we arrive we need documentation so we do anything. It is with a work contract that it is possible to regulate the situation... but it is difficult.*

*(Quando a gente chega cá, a gente precisa de documentação, por isso a gente faz qualquer coisa (...) é através de um contrato que a gente consegue... mas é difícil.)*

(Portugal, female interviewee from Brazil, restaurant, migrant in an irregular situation at the time of exploitation)

That ability "to do anything" and the fear of deportation supports an unbalanced relationship between the absolute need of the migrant having a work contract to get legal documents and the (un)willingness of the employers to sign a work contract. The participants in focus group 1 mention that working without pay, only in exchange for a work contract, so that one can apply for a residence permit at the immigration authorities, is common practice nowadays. In this respect, participant 3 describes her trajectory after arriving in Portugal. First, she worked as a domestic worker with a salary but no contract, so she was unable to obtain her regularisation. Later she became a domestic worker for another employer that provided her a work contract but did not pay her any wage during the first three months; it was on the basis of that employment relationship (unpaid) that this participant applied successfully for her residence permit.

The vulnerabilities of migrant people put them in a position where basic rights are denied (according to participants in focus group 1 and one interviewee) and where the claim for those rights has no place.

In the perspective of participants in focus group 1 as well as in the view of one of the interviewees, the Portuguese legal system contributes to expose foreign workers to exploitation as it requires a complicated sequence of steps and procedures before regularisation can be attained. According to participant 3 in focus group 1, the design of the law or the way in which it works in practice is negative for both workers and employers. In particular, the former are punished for things that are not their fault, such as not being able to present to the SEF a copy of their employer's identity card when the employer refuses to provide them with this document.

*This issue of the SEF requesting the [employer's identity] card is totally out of the law. Totally out of the law. This cannot be. We know things are wrong for everybody. Things are wrong for us, they're wrong for the employers, they're wrong for those who work; we know there's nobody working according to all of the rules. Things are wrong at the tax authority, at the social security too, but we can't pay for a mistake that other people do and then charge on us because we need it, we need this work. I don't agree with that in any way.*

*(Esse negócio do SEF pedir esse cartão está totalmente fora de lei. Totalmente fora de lei. Isso não pode existir. A gente sabe que as coisas andam errado para todo o lado. Andam para nós, andam para o patrão, andam para quem trabalha, a gente sabe que não tem ninguém trabalhando certinho. Anda errado nas finanças, anda errado na segurança social mas nós não podemos pagar por aquele erro que as pessoas cometem e vêm cobrar da gente por a gente precisar daquilo, daquele trabalho. Eu não concordo com isso de jeito nenhum.)*

(Portugal, female focus group participant from Brazil, domestic worker)

## 5. Workers' experiences of severe labour exploitation

In what concerns the workers' experience of severe labour exploitation ten recurring themes arose during the interviews and focus groups:

- the absolute need of a work contract rendering migrant workers very vulnerable in their relation with the employers;
- poor working conditions mainly characterised by: very long working hours, no payments to social security, low wages, and few breaks;
- poor accommodation conditions experienced by all those working in agriculture, and by some in domestic service;
- non-compliance by the intermediary/recruiting agencies of the initially promised conditions, namely in the case of agricultural workers signalled as victims of trafficking in human beings;
- mismatch between the initial agreement at the outset of the employment relationship and the actual working conditions;
- frequent verbal violence and threats by the employers;
- employers taking advantage of workers' economic constraints;
- challenging the employer not worthwhile;
- scarce resources making it more difficult the confrontation with employers;
- feeling of helplessness.

### 5.1. Working and living conditions experienced

Living conditions experienced	Domestic workers	Migrants in an irregular situation	Seasonal workers	Other	TOTAL
Problems with pay	5/5	9/9	5/5	1/1	20/20
Problems with conditions at work	4/5	7/9	5/5	1/1	17/20
Sign a work contract or some other type of document	2/5	6/9	5/5	0/1	13/20
Problems with housing/accommodation	2/5	1/9	5/5	1/1	9/20
Problems with the work tasks	4/5	3/9	1/5	1/1	9/20
Problems with documents	0/5	0/9	1/5	1/1	5/20
Experience of violence	2/5	2/9	2/5	1/1	7/20
Violence to others	2/5	2/9	4/5	0/1	8/20
Kept in isolation or hidden	1/5	0/9	0/5	1/1	2/20

It is relevant to observe that, concerning the duration of the experience of exploitation, there is a balance between workers exploited for more than one year and less than one year (10 situations each). In four cases, the exploitation lasted between two and six years. The shortest period of exploitation experienced by one interviewee was 15 days.

## 5.2. Pay and work tasks

Problems with pay are transversal to all groups and affect all the interviewees.

However, problems with pay assume different expressions. The two most frequent situations, each reported by ten interviewees, refer to: lack of payment of holidays or Christmas allowances, compulsory by law; and/or mismatch between the amount paid and the actual hours worked.

*I usually worked more than 200 hours/month but I never received more than €300 and sometimes €200.”*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

This is a situation experienced by all domestic workers, and by three seasonal workers.

As a result, a female domestic worker working for a company providing cleaning services refers that when she left the job the employer owed her large sums of money. Another domestic worker mentions that, only after an agreement was negotiated by a lawyer hired by her, her former employer finally agreed on paying €5,000 plus severance pay.

Some four interviewees report a monthly payment, for a full time job (and sometimes for a very long working day), much lower than the minimum wage in Portugal.<sup>20</sup> A male migrant in an irregular situation working in agriculture, for example, received a total of only €180 for the first two months working in that workplace, and he was not paid for the remaining two months – he was still waiting to be paid when he left the situation. He further observes that, when a worker missed work for one day due to sickness or injury, several days would be written off his working time sheet as a penalty. A woman who was employed by an organisation providing home-care services for the elderly mentions that the employer’s time sheets repeatedly showed less working hours than she had actually worked:

*They didn’t tell me that I had to sign. I didn’t know we were supposed to sign. So I would just do my work and come back. [...] more than a month went by and they paid my salary, and I said: ‘That’s not my salary’. They said, “You didn’t sign, so that’s how much you will earn”. I said, “I can’t earn that, that’s too little, that’s practically nothing. I worked for over a month.” “You didn’t sign, how can we know?” I said, “Look at the company schedule, how can you say that I have not worked? If I hadn’t worked, the person would call the company to say nobody came. ”*

*(Não me disseram que eu tinha que assinar. Não sabia que deveríamos assinar. Depois sempre eu ia fazer os meus trabalhos e voltava. [...] estive um mês e tal, depois me pagaram um salário e eu disse, “Esse salário não é meu”. Depois disseram, “Você não assinou, então vai ter que receber isso”. Eu disse, “Não vou receber isso, isso não dá para nada, isso não serve praticamente para nada. Eu tive um mês e tal de trabalho.” “Você não assinou, como vamos saber?”. Eu disse, “Se mandaram escala da empresa, como é que vão saber que eu não trabalhei? Se não trabalhei a pessoa iria chamar para a empresa que não está ninguém ali.”)*

(Portugal, female interviewee from Cape Verde, domestic work/homecare migrant in an irregular situation at the time of exploitation)

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<sup>20</sup> The national minimum wage in Portugal was: €485 in 2013-2014-from January to September 2015; €505 from October to December 2015; €530 in 2016; and €557 in 2017.

Another frequent situation is the payment not corresponding to what was initially promised at the outset of the employment relationship; seven interviewees mention this problem.

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

*(O que ficou combinado no início é que eu ficava um mês à experiência e depois disso, se tudo corresse bem me faziam contrato. O ordenado era fixo de €500. Só que aí depois começou a não correr bem. Não me fizeram contrato e havia meses que pagava €400, havia outros que pagava €400 e tal mas nunca cumpria o acordado. Como não tinha contrato me diziam que não tinham obrigação nenhuma.)*

(Portugal, female interviewee from Brazil, restaurant, migrant in an irregular situation at the time of exploitation)

Frequently the reason underlying this non-compliance was never clearly explained by the employers and there was a kind of pressure exerted on the workers, using their irregular situation in the country as an argument, for the acceptance of these conditions namely in exchange of a work contract.

Whenever these irregularities on payment were signalled to the employers, they often invented excuses:

*(...) He thinks that we do not know anything that we are some fools who are working there (...) He thought that I didn't do the calculations. But when I did it I realized that after all he was lying!*

*((...) Ele pensa que nós não sabemos nada que é um tóto que está ali a trabalhar.(...) Ele pensava que eu não fazia as contas. Mas quando eu fiz as contas percebi: "afinal ele está a mentir"!)*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

In two other cases, the employer replied that that the amount would be corrected with the next payment, but it never was:

*I always complained and asked about it. And they told me that they were going to solve it "next time, next time". It was always "next time". And they never did anything to settle the accounts. This way they would let time go by.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

In the case of four interviewees, three working in agriculture and one working in a company providing cleaning services) the difference between the promised salary and the real payment was due to unexpected deductions: social security contributions, taxes, accommodation and even food and working clothes.

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

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

Other problem associated with payment is the irregularity of the pay day, which let two female interviewees, one migrant in an irregular situation in industry and one domestic worker, without any money for several days. One of these interviewees, who worked at a residential care home for elderly people, reports that she had “to beg” in order to receive the salary since there was not a fixed day for the payment:

*I had days and days without money and I had to beg him for the payment.*

*(Passava-se dias sem eu ter dinheiro e para pagar eu tinha que pedir.)*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

The requirement to carry out several tasks different from what had been agreed at the outset of the employment relationship is the main issue raised by those who declare problems with work tasks. This is more frequent among the domestic workers. Resorting, once again, to the situation of one woman who worked as a domestic worker, a good example of these problems with work tasks can be found: besides caring for the elderly person at her own home, as it was supposed, whenever there were meals or parties organised at the employer’s home (the son-in-law of the care recipient), she had to be there to work in the kitchen. Furthermore, when the employer’s family was on holidays, she travelled with them and carried out an additional set of tasks besides her regular work volume as she had to take care of other elderly persons and children. She was never paid anything for any of these extra tasks.

### **5.3. Lack of social security contributions**

Nearly half of the interviewees (9/20) know that employers failed to pay social security contributions, although this had been promised at the outset of the employment relationship. One interviewee, for instance, a migrant in an irregular situation working in the construction sector, only found out about this when he went to the social security services to ask for information on how to regularise his situation in Portugal and was informed that he did not have enough social security contributions (six months of contributions) to apply for a residence/work permit yet. A woman working at a café mentions that her employer said that, if he would make the discounts, she would receive less money because those contributions would be deducted from her salary. In a third case, the employer only paid her social security contributions during the first three months she was working in a meat processing factory; she never knew the reason why.

An employer not paying the social security contributions, even when he deducts the due amount from the worker’s wages, was also experienced by one of the participants in focus group 2. All the participants in this group, however, agreed that this is a shared experience by most construction workers.

### **5.4. Duration and organisation of working time**

The most frequent situation among those with problems regarding conditions at work is the prevalence of very long working hours. To many interviewees is frequent to have 10/12

uninterrupted working hours; but the most extreme situation is that of a man working in agriculture who reports having worked sometimes for 28 hours in a row.

Besides a very long working day, several interviewees also report not having fixed working hours, working time and days off depending on the volume of work. Usually the workers were told that they had to keep on working until the service was complete. One interviewee in an irregular situation and working in a grocery refers to feeling exhausted all the time:

*I finished my work at 00:30 and then I started my work at 09:00 in the morning. I had time to sleep for 5 hours, of course I was feeling exhausted.*

(Portugal, male interviewee from Bangladesh, retail, migrant in an irregular situation at the time of exploitation)

Very long working hours, in particular because there is no scheduled time to leave at the end of the day, are also mentioned in both focus groups.

Furthermore, the domestic workers participating in the first focus group also mention the difficulties in having breaks and time off. In that group all participants agree that live-in domestic workers do not have actual working hours: they must be available whenever the employer requires.

This is further stressed by the interviews. One interviewee working for a company providing cleaning services clearly testifies that the employer controlled all her movements as well as of the other colleagues, not allowing them to have any breaks:

*No! [we could not take breaks] I said, "At least, we should have 30 minutes.", "You work in the morning, you don't need to have 30 minutes to eat or anything. It's working, working, working, and to put an end. (...) [We could go to the bathroom] Hidden! Because he said, "You do not go to the bathroom to do anything. You go to the bathroom to rest or to save the time, to win time." We did everything hidden from him.*

*(Não [se podia fazer pausas]! Eu disse, "Pelo menos devíamos ter 30 minutos.", "Trabalham de manhã, não têm que ter 30 minutos nem para comer nem para nada. É trabalhar, trabalhar, trabalhar e acaba logo". (...) [Podia-se ir à casa de banho] Escondido! Porque ele dizia, "vocês não vão há casa de banho para fazer nada. Vão à casa de banho para descansar ou para poupar o tempo, para ganhar o tempo." A gente fazia tudo escondido dele.)*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

## 5.5. Work-related accidents and injuries

Work-related injuries and accidents are not frequently reported. As far as it can be inferred from the interviews, two interviewees working in agriculture got sick or injured during work, but in neither case did the employer provide them the appropriate assistance:

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

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

Another interviewee (female, cleaning, irregular situation) refers to the "*impossibility*" to be sick. She mentions one of her colleagues (a Portuguese one), who cut her finger while working and was asked by the employer to tell the hospital staff that the accident had occurred out of the job. On that occasion the employer provided the injured worker with one paid day off, although the worker needed three days before she could resume working.

Also in focus group 1, one participant told her own story: when she was working for a company providing home-care support to a bed-ridden person, she got a rupture in her harm tendon; however, she did not have the (compulsory) accidents at work insurance and she was not allowed by her employer to leave the workplace and get treated; she had no right to go to the doctor, she said, therefore her only option was to quit that job in order to be able to get proper treatment. When she left she was not fully paid for her work.

A woman in an irregular situation who was working at a restaurant reports that she signed a document (but not a work contract) related to the rules of the workplace. In this document was written, for instance, that the employer would discount €70 if the employee was absent from work regardless of the reason.

## 5.6. Work contract

A work contract was duly signed by most of the interviewees (13/20).

However, experiencing problems with the work contract is frequent. In all these cases there was an inconsistency between the terms of the contract and the real working conditions, as it was already stressed, regarding working hours and payment.

On the other hand, the contract could not be understood by six workers, since the document was written in Portuguese and this language was unknown by the interviewees (one migrant in an irregular situation and five seasonal workers). In these cases they just looked for their name in the contract, for the payment amount and they "*trusted*".

*I knew that it was my contract because he [the owner of the farm] said to me, "this is your contract, sign it".*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

The reason for not claiming a work contract in a language that he could understand is, in the words of one migrant in an irregular situation, linked to a situation of helplessness:

*I have never had a chance to say that I wanted a copy in English because I was helpless.*

(Portugal, male interviewee from Bangladesh, retail, migrant in an irregular situation at the time of exploitation)

In some cases the contract was signed with an intermediary or a recruitment agency, which relieved the business' owner of liability. Two of these situations can be observed among the migrants in an irregular situation and the other three among the seasonal workers.

In seven cases there is no formal contract signed. These include cases in which the worker tried to solve this with the employer. The story of a woman in an irregular situation who was working at a restaurant is particularly illustrative:

*Every time I asked, "what about the contract?" they answered me, "later, later". They never gave me an explanation. There was one day when I said, "a month it is not seven months. I am here because I really need the contract. When you make me a contract you do not need to pay my social security contributions, I will pay for that at my own expense. But I need the contract." And then they sent me away, from one day to another.*

*(Sempre que eu falava: "é o contrato?" me respondiam, "mais para a frente, mais para a frente". Nunca me deram uma justificação. Só que houve um dia que eu falei, "um mês não é sete meses. Eu estou aqui porque realmente preciso do contrato. E quando a senhora me fizer contrato não precisa pagar não para a segurança social, eu mesma pago do meu bolso. Mas eu preciso do contrato." E depois me mandaram embora, de um dia para o outro.)*

(Portugal, female interviewee from Brazil, restaurant, migrant in an irregular situation at the time of exploitation)

The job situations lacking a work contract are over-represented in the group of domestic workers: three of these do not have a contract. Participants in focus group 1, with domestic workers, highlighted this question, signalling the existence of many foreigners working in informal employment relationships, even when they already have a regular situation in the country. This is the present circumstance of one participant, who mentions that her current employer provides her with a good salary but no work contract, no social security contributions and none of the compulsory holiday or Christmas allowances.

## 5.7. Housing and accommodation

Almost half of the interviewees experienced problems with accommodation. This kind of problems assumes particular relevance for the seasonal workers working in agriculture; also the man classified as 'other' who was subjected to a very severe form of labour exploitation in the construction sector, and two female live-in domestic workers reported problems related to the accommodation conditions.

One woman interviewed reports specific problems with accommodation related to her situation as a live-in domestic worker. In this case, she had the responsibility of caring for an elderly woman. In the interview she refers that she usually slept in a small room where her employer kept her wardrobe. This small room was directly connected to the room of the elderly woman that she was caring for. When the care recipient was sick, the interviewee had to sleep on the floor, next to her. During the first two years and six months, she slept on a couch; only then did the employers provide a proper bed in the wardrobe room. She was required by the employer (the son-in-law of the care recipient) to leave her door open at all times, might the old woman need immediate support. In her words, this was a humiliating experience.

*I endured a great deal of humiliation. Sometimes I even had to sleep on the floor, lying just over a duvet, because the lady was scared of dying alone and not having anyone in the room with her. Even though I have a light sleep and my room was connected with her room, I had to sleep on the floor.*

*(Aguentei muita humilhação. Às vezes eu tinha até que dormir no chão, em cima do édredon, porque a senhora ficava com medo de morrer sozinha e não ter ninguém no quarto com ela. Apesar de eu ter o sono leve, e o meu quarto dava para o quarto dela, eu tinha de dormir no chão.)*

(Portugal, female interviewee from Brazil, domestic worker, regular migrant at the time of exploitation)

All the seasonal workers working in agriculture describe the accommodation conditions provided in their workplace as very bad and lacking privacy: in many cases they had to sleep in containers; temperature inside these premises was very hot; a large number of workers were accommodated together, sleeping in bunk beds:

*In some rooms, there were 12, 13 people living there. There was no hot water. This was the sort of conditions [in which we lived].*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

*The accommodation was very bad. We used to sleep in bunk beds, the floor was sand... we were 8 or 10 persons in the same room (...). Inside it was very hot in the summer time, very difficult! Sometimes we used to sleep outside...*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

Some, in a way, relativise the poor accommodation conditions experienced, stating that these are 'normal' in agriculture. Though, at the same time, highlighting that this constitutes disrespect for the workers, their work being all the employers care for:

*Everywhere in agriculture the accommodation is always a problem, be it with the agencies or with farmers directly, because they want to put as many people as possible in this one room. They don't care about the people; they just need their work.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

## 5.8. Experiences of threats and violence

Violence was directly experienced by seven interviewees and eight testify violence to others. "Sometimes they said bad words to us" (male interviewee, agriculture, seasonal worker) could be the sentence summarising the core of most answers given. Bad words, verbal violence, racist insults or bullying are the expressions mostly used by interviewees when talking about violence:

*He bullied people, he shouted at us... because we can't say anything to him... because he's the Portuguese: whatever he says, we just say yes. Yes, we had to follow his instructions. It was the only thing we could do.*

(Portugal, male interviewee from Nepal, agriculture, migrant in an irregular situation at the time of exploitation)

Threats and abuse, associated with verbal violence and physical violence, were also experienced. The most extreme case is the one of a male construction worker who was severely abused by his employers. This man was living at his employers' house and endured this abusive employment relationship for six years, "*always living that life; very hard*", he says. The employer took him around all the time to work in construction projects according to the needs of the moment. He mentioned that the employer was always picking on him, and during worktime he often threatened to hit him with a hammer if he did not work quicker. He was also many times beaten by the employer at home. For example, the employer would complain that he had been late in complying with an order and thus beat him with a stick. He felt unsafe and permanently watched both at home and at work.

This same man was kept in isolation. His employer often locked him inside the house to prevent him from going out on his own, especially when he had apparent bruises from acts of physical violence by the employer:

*Many times they [employer and wife] went out, and to stop me from going out... several times, when they had beaten me so hard that I had my face all bruised... they went out and had to leave the door locked to stop me from leaving.*

*(Muitas vezes eles [empregador e esposa] saíam, e para eu não sair... umas tantas vezes, quando eles me batiam que eu ficava com a cara pisada... eles saíam e tinham de deixar a porta trancada para eu não sair.)*

(Portugal, male interviewee from Western Africa, construction, regular migrant at the time of exploitation)

Being kept inside, in isolation, is a situation experienced also by one domestic worker interviewed. This woman was very restricted with regard to going outside as this would mean leaving the elderly care recipient in her care unattended. Once, the care recipient had to be admitted to the hospital and stayed there for six days while recovering and even so the interviewee was instructed by the employer to stay alone inside the house during those days.

Someone keeping one's documents is a problem reported by two interviewees. Again, the male construction worker severely abused experienced this kind of problem. All his personal documents were kept by the employer. When the documents had to be presented at some institution, for instance a medical appointment, either the employer or his wife would accompany him. The interviewee observes that not having the documents at his disposal was one of his main problems, because it deterred him from attempting to escape the situation. He is convinced that the employer kept those documents precisely to make sure he did not escape. Besides this case, a seasonal worker in agriculture mentioned that the intermediary agency he hired in Portugal in order to find a job and have legal documents kept his personal documents.

Going back to isolation-related issues, it is important to stress that, even though few interviewees explicitly declare having been kept in isolation or hidden, some agricultural workers refer the isolated location of their working place as a severe constraint to their wellbeing and living conditions. They were very far away from shops and other services, in rural areas where public transport was inexistent (mentioned by two interviewees). Referring to his working place one interviewee says that he was working "*in the jungle*" (male interviewee, agriculture, irregular situation).

## 5.9. Monitoring and/or inspections?

<b>Witnessing / hearing of inspections/controls</b>	<b>Domestic workers</b>	<b>Migrants in an irregular situation</b>	<b>Seasonal workers</b>	<b>Other</b>	<b>TOTAL</b>
<b>Never witnessed or heard</b>	5/5	4/9	2/5	1/1	12/20
<b>Witnessed or heard</b>	0/5	5/9	3/5	0/1	8/20

The majority of the interviewees never witnessed or heard about inspections or controls at their workplace. As expected, this is the case of all of the domestic workers, since labour inspections or controls are not allowed by law in private households – this is stressed by some interviewees as well as by the participants in the first focus group with domestic workers.

A male migrant in an irregular situation working in retail reflects upon the lack of inspection, regretting that due to this many people, as him, are suffering at their workplaces. This is a situation that often remains hidden and unknown by the competent authorities, thus favouring the employers:

*Is a pity that people like me are suffering in many workplaces and the employers are getting the advantages by using us and there is no inspection. They are not afraid of any fine....*

(Portugal, male interviewee from Bangladesh, retail, migrant in an irregular situation at the time of exploitation)

Some of those who report to be aware of the existence of any inspection/control state that this was a result of a complaint made by a former worker or by the interviewee himself/herself after he/she left the job.

In some cases the (positive) outcomes of those inspections are not evident:

- In one case, following a workplace inspection by the authorities, the employer was requested to regularise the workers' situation. He then charged €300 from each worker in irregular situation to allegedly hire a lawyer that would take care of their regularisation; nobody ever saw this lawyer, and none of the workers at stake ever were regularised. Some of them still work at the same meat processing factory in an irregular situation.
- In another situation the inspectors were able to identify two foreign workers in an irregular situation (the company employed about 18 cleaners at the time, according to our interviewee). The employer was then ordered by the authorities to sign a work contract with those two workers so that they could obtain a residence/work permit. The employer complied with the order but at the end, as explained by the interviewee, things did not go well:

*They [the authorities] caught two girls. They were illegal, they had no papers, they had no contract, they had nothing. So the employer was obliged to provide them with a work contract. And that he did. He gave them the contract, they signed it. A week later, he forced them to sign a termination of the contract, as if they were leaving the job. No, they kept working there; it was only a paper saying there was no contract anymore.*

*([As autoridades] apanharam duas raparigas. Elas estavam ilegais, não tinham papéis, não tinham contrato, não tinham nada. Então o patrão era obrigado a fazer o contrato para elas. E ele fez. Ele fez o contrato, elas*

*assinaram. Passada uma semana, ele obrigou-as a assinar que rescindiam do contrato como se elas se fossem embora. Não, elas ficaram a trabalhar lá; era simplesmente um papel a dizer que já não tinham contrato.*

(Portugal, female interviewee from Ukraine, cleaning, migrant in an irregular situation at the time of exploitation)

Conversely, two male interviewees who were working in agriculture reported that they had managed to come out of the labour exploitation situation as a consequence of the inspection. One of these interviewees refers that there was a joint inspection from the SEF and the ACT, which was “a very well planned inspection”. That time, according to our interviewee, the inspectors asked the owner to leave and they could talk freely with the workers. These joint and well-articulated inspections may be considered as a practice that should be replicated more often, also in other economic sectors.

It is also important to stress that four interviewees, two migrants in an irregular situation – one working at a meat processing factory and another in agriculture - and two seasonal workers in agriculture mention that they were ‘advised’ by the employers to lie to the inspectors and to say that they were happy with wage, working and accommodation conditions. One of those workers even reports they he and his colleagues, working in agriculture, were threatened with the possibility of deportation:

*If you tell the truth you are going to be in trouble and you have to leave this country.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

A female worker in a meat processing factory reports that, when the inspection took place, another worker was instructed by the supervisor to hide in the refrigerating chamber until the inspectors left. This worker spent three hours in the chamber and had to seek medical support at the hospital after that. Also a female worker who stays in the country in an irregular situation and was working at a restaurant was kept in the basement by her employers while the inspection was taking place.

## 5.10. Recruitment

Recruitment strategy	Domestic workers	Migrants in an irregular situation	Seasonal workers	Other	TOTAL
Family or acquaintance	3/5	6/9	1/5	0/1	10/20
Directly by the employer	2/5	1/9	0/5	1/1	5/20
Intermediary / Recruitment agency	0/5	2/9	4/5	0/1	6/20

The most frequent situation, particularly among the domestic workers, is the one where family members or acquaintances act as facilitators (providing information, contacts, guidance, etc.) regarding the integration of migrants into the labour market.

With the exception of seasonal workers, some people took the initiative of contacting directly the employers in order to find a job. Some of those people had the support from Portuguese NGOs.

However, a critical voice rose in focus group 1, with domestic workers, concerning the role played by some civil society organisations as facilitators of job search. One participant mentions that, according to her knowledge, some NGOs put foreign women in touch with potential employers, regardless of the conditions offered. For example, some of these employers only hire a woman as a domestic worker on the condition of providing her a work contract but no pay. According to this participant, the staff of the NGO at stake does not provide clear information to the foreigner at the outset, assuming that working conditions and practices are matters to be resolved directly between employer and worker.

Looking closely into the forms of recruitment, a common pattern appears for those who come from Asia to work in agriculture: having resorted to paid services (typically in their country of origin but also, in one case, already in Portugal) for getting the job. It is important to recall, once again, that all of these workers are signalled as cases of trafficking in human beings.

Taking as an example one of these situations: one interviewee paid to a temporary agency work company in Nepal for all the necessary arrangements to come to Portugal. They offered him a contract for two years, the promise of payment of the minimum wage even if he didn't have a job and a legal status after one year of work. He paid 850,000 Nepalese rupees (about 7,000 Euros) for this arrangement. Following his arrival to the country he tried to contact this same company in Portugal (in Nepal they gave him the address and a phone number) in order to get some guidance but he was only able to reach them after two days. After this they eventually provided him a few job proposals with the possibility of having a work contract. However, the Portuguese branch of the company did not keep the other commitments, namely regarding the payment of the minimum wage even if he didn't have a job, when he decided to leave his first job in Portugal. Furthermore, he had to pay a lawyer in order to get a permanent visa. He thus realises that the promises he got in Nepal, and for which he paid for, were fake.

Another interviewee reports that still in Nepal, he contacted an Indian man who gave him the chance of migrating to Europe. This man took him and other persons in the same situation by airplane from India to Russia; then by car all the way to Portugal. Our interviewee was required to pay the smuggler on several moments of this journey – about 10 thousand Euros in total. He remarks that he did not know exactly where he was while travelling by car. For instance, he remembers being in a city at a given moment and somebody telling him that it was the capital of Sweden. Only afterwards, looking at a map and with the help of others was able to get a notion of his itinerary. He stresses that the most important thing at that time was to follow the instructions of the man leading the group or else you would find yourself in serious trouble. He was told that he would be working in Portugal with no further explanation. The other countries were only stopovers as far as he can tell: places to stay the night, with no work involved. The man leading the group disappeared upon arrival in Portugal, taking all the money with him. In the meantime, though, he presented him to a Nepalese man who offers him the job at the farm owned by a Portuguese to whom our interviewee refers to as his “*employer*” or “*boss*” during that period. He is convinced that these three men were connected to each other, conducting the whole scheme in collusion, but he does not know the details of such relationship.

### 5.11. What happened when challenged the employer?

Challenged the employer	Domestic workers	Migrants in an	Seasonal workers	Other	TOTAL
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		<b>irregular situation</b>			
<b>Yes</b>	3/5	4/9	2/5	1/1	10/20
<b>No</b>	2/5	5/9	3/5	0/1	10/20

Half of the interviewees managed to challenge their employer about: unpaid wages and/or the several deductions made in wages; the inexistence of a work contract; and/or poor working conditions. However this questioning was not successful.

In many cases the employers express the view that, if someone is not happy, then the workers are free to leave the job and even the country whenever they please. This kind of attitude was reported by a female migrant in an irregular situation, working for a company providing home-care support for elderly people, who uses a dramatic wording to express how she feels about the way she and other migrants are treated by the employers, “*like you’re a dog*”, she says:

*“Get out of the country if you don’t like it, get out.” Practically that’s what they think. We are exploited or we left our country because something happened and they treat you like this... like you’re a dog (...)*

*“Sai do país, sai.” Praticamente, é isso que eles pensam. Assim, como nós somos explorados ou saímos do nosso país por causa de alguma coisa que aconteceu e tratam as pessoas mesmo assim... assim como um cão.*

(Portugal, female interviewee from Cape Verde, domestic work/homecare migrant in an irregular situation at the time of exploitation)

In other cases the employers simply keep postponing dealing with the issue, month after month, namely arguing that the economic crisis is a threat for companies and workers have to live with that.

In one particular case, a male migrant in an irregular situation working in construction challenged his employer about the unpaid wages once. He never received an answer. The employer did not show up at the workplace ever again, instead leaving the supervisor in charge of everyday operation. Our interviewee has tried to contact the employer by phone several times since then, but always to no avail. He further remarks that this man moved to a different address in the meantime, which makes it impossible to look for him at home.

Once again the feeling of helplessness emerges from the words of one interviewee when speaking about the reasons for not having challenged the employer:

*The main problem is when someone comes here and does not know the national language and he must survive, he must pay for food, house, and he does not have residence card, he is helpless.*

(Portugal, male interviewee from Bangladesh, retail, migrant in an irregular situation at the time of exploitation)

However, the feeling of helplessness seems somehow to be shared by many others who had no possibility to challenge their employer. Being afraid of the employer, as reported namely by a woman working in a company providing cleaning services and being in a helpless situation and having a desperate need for a job and a wage (as reported namely by a male migrant in an irregular situation in agriculture) are strong reasons not to complain and to accept the conditions offered as they are:

*(...) I was afraid of him. We were there working, when he arrives at the company, everyone was kind of static, didn't know what to do, didn't even know how to clean properly. (...) His presence is so 'heavy' that he scares any person.*

*((...) eu tinha medo dele. Estávamos ali a trabalhar, quando ele chega na empresa, todo o mundo fica tipo 'estreito', não sabe o que fazer, nem sequer sabe limpar direito. (...) A presença dele é tão 'pesada' que assusta qualquer pessoa.)*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

*Yes, I accepted everything because at the time I had a lot of problems. I didn't have a job, I didn't have money to eat, and so whatever he said was OK. Even if he asked me to work for free, "I give you the work, I can't pay you but I give you the food", even then I'd have to accept it because I didn't have money to eat. I want to live my life, without food I can't live, so I have to accept that.*

(Portugal, male interviewee from Nepal, agriculture, migrant in an irregular situation at the time of exploitation)

Another interviewee, a woman in an irregular situation working at a restaurant, explicitly refers that challenging the employer is not worthwhile. Three others prefer facing the difficulties of finding a new job other than confronting the employer, and these eventually left the job.

For one of the interviewees that did not challenge the employer, an Asian man who came to Portugal to work in agriculture and is signalled as a victim of trafficking in human beings, the time of exploitation is a time to be forgotten and to keep in the past, mainly in order not to disturb the present.

## 6. Asking for help: victim support and access to justice

With regard to asking for help, seven recurring themes arose during the interviews and focus groups:

- the fear of negative consequences if an attempt is made to seek assistance or to report the situation to the authorities, in particular losing the source of income, being expelled from Portugal and suffering violence by the employer;
- the relevance of having or not having valid documents from the immigration authorities;
- the lack of knowledge about workers' rights, immigrants' rights, and how and where to look for the support needed;
- difficulties in ensuring that former employers comply with their pending obligations, especially concerning wages and social security;
- the quality of the assistance received, including limitations in the capacities and skills among the frontline staff of public services;
- several reasons exist not to report the situation to the police, including lack of trust in the capacity of the police or other authorities to solve the problem at stake, and fear of getting into troubles with both the employer and the authorities.
- the high costs of legal representation and the long length of court proceedings.

Most of the workers had left the situation of exploitation by the time of the interview. Two interviewees, however, were still in this situation. The same applies to one focus group participant. The tables below provide a systematic view of the main aspects examined in this section.

	Looked for help/support to leave/resolve situation (aside from police)	Received assistance	Reported to police	Court proceedings	Told about workers' rights		Satisfaction with current situation*
					Before exploitation	After exploitation	
PT_S1	.	.	.	✓	.	.	+/-
PT_S2	.	.	✓	✓	.	.	+/-
PT_S3	.	.	✓	✓	.	.	+/-
PT_S4	✓	✓	✓	✓	.	.	+
PT_S5	.	✓	.	✓	.	.	+
PT_D1	✓	✓	✓	✓	.	✓	-
PT_D2	✓	.	.	.	.	.	+/-
PT_D3	.	.	.	.	.	.	-
PT_D4	.	.	.	.	✓	✓	+/-
PT_D5	.	.	.	.	✓	.	+/-
PT_IR1	.	✓	.	.	✓	.	-
PT_IR2	✓	✓	.	.	✓	.	-
PT_IR3	✓	✓	.	.	.	.	-
PT_IR4	.	.	.	.	.	✓	-
PT_IR5	✓	✓	.	.	.	.	-
PT_IR6	.	✓	.	.	.	.	+/-
PT_IR7	.	✓	.	✓	.	.	+
PT_IR8	.	.	.	.	.	.	+/-
PT_IR9	.	.	.	.	.	✓	+
PT_O1	.	✓	.	✓	✓	.	+/-

\* Note: For the purpose of analysis, the interviewees' answers on whether they are satisfied with their current situation have been organised in three categories meaning: +, mostly satisfied; +/-, partially satisfied; -, mostly unsatisfied.

Experience	Number of interviewees	Number of focus group participants
Looked for help/support to leave/resolve situation	6/20	2/6
Received assistance	10/20	2/6
Reported to police	4/20	0/6
Court proceedings	6/20	2/6
Told about workers' rights	8/20	.
Satisfied with current situation	4/20	.

## 6.1. Looking for help or support

Not more than six interviewees state that they contacted someone (apart from the police) for help or support to resolve their work problems. As to the focus groups, only one participant in each of them refers to a direct experience of this kind. This is a minor occurrence in all target groups considered, and for both women and men. In the case of most interviewees therefore, their situation came to the knowledge of the gatekeeper for reasons other than looking for help: they were forwarded to the gatekeeper's services by the authorities after a workplace inspection and/or the opening of legal procedures, or they are in contact with the gatekeeper due to common acquaintances or to activities developed by the gatekeeper in the neighbourhood where they live.

It is important to bear in mind that, even among the workers who did contact someone, the nature and scope of such contact can be distinct. The only seasonal worker in this circumstance made a single phone call to an immigrant association to ask them for advice on issues concerning his work contract and regularisation procedures. A total of six workers went to a local office of the ACT to obtain complete information on their rights: this was the case of two interviewees working in domestic service and one interviewee working at a factory, as well as one focus group participant working in domestic service and another one working in construction. Last, two migrants in an irregular situation sought the support of local NGOs in the hope of solving broader problems with work, accommodation and regularisation.

Two interviewees took this initiative while they were still in the situation of labour exploitation, while four others did it after leaving the situation. Among the latter, the fear of jeopardising the job is the key reason why they did not look for support during the situation. One of the domestic workers stresses that she knew about the existence of the ACT already, but she never approached it while the employment relationship lasted for fear of retaliation from the employer, including physical violence.

In the case of the workers who did not look for help or support at all, one of the reasons presented by nearly all of them is that they were afraid of being dismissed and therefore losing their income, as well as getting into additional difficulties with respect to their regularisation as immigrants in Portugal. Those with a residence permit were worried that they might not be able to keep or renew their permit if the employment relationship was over. In turn, those without a permit hoped to obtain their regularisation by staying on the abusive situation and/or believed that they could be deported by the authorities if they looked for help or support. Especially scared about any contact with the authorities were the workers that could not keep their own personal documents. This was the case of one interviewee working in the construction sector whose documents were retained by his employer, as well as one worker in agriculture whose documents were retained by the recruitment agency that sent him to work in different properties.

Like for many others, being in an irregular situation is the main reason presented by this interviewee in construction to explain why he has not reported the situation to any authority:

*As I'm still lacking even a document to justify my stay here [in Portugal], I kept myself like that, I kept myself at the corner... What I'm focusing my efforts on, first, is to have at least a residence permit. And I can't stop working to go and look for a person or to ask for help... So I'd rather put that aside for the time being and take care of my legalisation.*

*(Como eu não tenho ainda nem justificativo de estadia aqui [em Portugal], fiquei assim, fiquei no meu canto... Aquilo para que estou a esforçar-me, primeiro, é para ter pelo menos um título de residência. E não posso deixar de trabalhar para ir procurar uma pessoa ou ir pedir ajuda... Então prefiro primeiro deixar isso de lado e tratar da minha legalização.)*

(Portugal, male interviewee from Guinea-Bissau, construction, migrant in an irregular situation at the time of exploitation)

Another interviewee, then working in the sector of agriculture, mentions that the risk of physical violence by the employer was a concern for all of those at the workplace including himself, and it could be directed against workers or their close relatives:

*We couldn't do that. If we tried to do it, if we told someone "This guy did this to us", they would know about it and they were very dangerous people, they would create problems to us and to our family. They are powerful people, so we can't do that.*

(Portugal, male interviewee from Nepal, agriculture, migrant in an irregular situation at the time of exploitation)

Physical violence was also a deterrent factor for a worker in the construction sector, who lived in the house of his employer and experienced various verbal and physical aggressions over a period of six years.

The participants of the focus group with domestic workers corroborate that immigrant workers often accept situations of exploitation as a necessary evil to obtain a residence permit. As one participant says,

*The important thing is to get legal, then you hope for a better job. It has been a period in your life, it's gone, forget about it.*

*(O importante é legalizar, depois é ter esperança de ter um trabalho melhor. Foi uma fase, já passou, paciência.)*

(Portugal, female focus group participant from Central Africa, domestic worker, regular migrant at the time of exploitation)

They may change to another job if this offers them better working conditions and better prospects of regularisation in the immigration authorities, but in any case they do not feel that they should ask for help to solve their problem. The anticipation that any attempt to solve the situation may get them into troubles with the employer is particularly relevant for domestic

workers, because they work and sometimes also live at the employer's home, often without anyone else nearby.

The participants of the focus group with construction workers put their emphasis on the issue of documents. According to them, foreign workers in an irregular situation do not complain about the problems since they do not expect their complaints to be attended by the authorities and fear negative consequences to themselves, including deportation. Employers are likely to be aware of this and therefore feel comfortable when abusing these workers. One of the participants in this focus group observes that a foreign worker has two priorities after going through a situation of exploitation:

*First, the priority in that case is getting paid for the time he worked so that he can feed people at his home. And second is having the immigration documents so that he can go for his next job.*

*(Para já, aí a prioridade é receber aquilo que já trabalhou que é para sustentar a casa. E a seguir é ter a documentação que é para ter o próximo trabalho.)*

(Portugal, male focus group participant from Cape Verde, construction)

The majority of workers in all target groups, including interviews and focus groups, also mention lack of knowledge, especially concerning what organisation to approach and how to present their case, as a factor that prevented them from coming forward for help. This is often associated with a self-acknowledged ignorance about the content and operation of legislation in Portugal.

A worker from the construction sector argues that many foreign workers that are in a regular situation and have the necessary knowledge still lack the economic resources to go ahead with the procedures to solve the problem, which often requires hiring a lawyer (focus group 2). This worker remarks that employers are aware of such limitation, so they choose not to solve the problem directly with the worker trusting that the worker will not go ahead with the complaint.

In addition, three workers mention the lack of time and energy due to high work intensity, long working hours and very scarce days of leave. The far distance between the workplace and any helping point is underscored by all of the interviewees in agriculture. One of them also refers to the limited knowledge of the Portuguese language as a source of discomfort with respect to the possibility of seeking help. Another one remarks that poor working and living conditions are accepted as 'normal' in this sector, especially by the first wave of migration from Nepal to Portugal. While these factors are mentioned only in exceptional cases, it is our impression that they have been relevant for several of the other interviewees in similar situations.

## 6.2. Assistance sought and received

Depending on each particular case as described below, the interviewees report receiving assistance from the following types of organisations:

- Immigrant associations;
- Local NGOs providing support in a variety of areas;
- Catholic charities;
- National Immigrant Support Centres (*Centros Nacionais de Apoio ao Imigrante*, CNAI);

- Labour authorities, in particular the Authority for Working Conditions (*Autoridade para as Condições de Trabalho*, ACT);
- Immigration and police authorities, in particular the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras*, SEF), the regular police and the criminal police, as a result of workplace inspections or complaints.
- Multidisciplinary teams for supporting victims of human trafficking, as a result of being signalled as a victim.

Half of the workers that sought assistance state that they did receive the assistance they needed. This is the case of a Nepalese seasonal worker who called a Nepalese association based in Portugal and could thus clarify various doubts in his native language. A migrant in an irregular situation (Southern Asia) was provided assistance in looking for a new job and accommodation in a shelter during six months by a local NGO; communication took place in English and Portuguese. Another migrant in irregular situation (Western Africa) received support from a NGO to look for another job and apply for a residence permit. These three interviewees make a positive assessment of the assistance received: they were treated well and their problems were successfully attended by the organisation at stake.

Also positive is the assessment of two Portuguese-speaking focus group participants that approached a local office of the ACT for information on their rights. They were then able to clarify all of their questions and obtain information on the possibilities and implications of taking further action, namely by pressing charges against the employer at the court.

In turn, three other Portuguese-speaking workers resorting to the ACT are unsatisfied with the assistance received. Two of them describe being ill-informed and mistreated at this authority. In one case, the staff member assisting the worker was rude and screamed at her. She was told that the ACT could not do anything about her problem:

*I felt really bad. I was treated badly, indeed. The lady who received me that day spoke very badly to me. "I'm not going to deal with this problem. If he wants to do contract, he can do it. But if he says he will not do it..."*

*(Eu senti-me muito mal. Fui mal tratada, mesmo. A senhora que me recebeu naquele dia falou muito mal comigo. "Eu não vou tratar deste problema. Se ele quiser fazer contrato pode fazer. Mas se ele disse que não vai fazer...")*

(Portugal, female interviewee from Guinea-Bissau, domestic worker, migrant in an irregular situation at the time of exploitation)

The interviewee believes this was due to her immigrant condition.

In the other case, the worker started by going to the ACT office located closer to where she lived and worked, where the staff member did not show interest in her case and made contemptuous remarks, leading the worker to leave the place before getting the information she was looking for. She eventually decided to try a different office of the ACT, about 40 kilometres away. This time she was satisfied with the way she was treated and informed, but she was disappointed to find out that this authority does not provide legal representation to workers in need.

According to the best experiences collected through interviews and focus groups, going to the ACT is useful insofar as workers are provided with information, without any procedure resulting from such contact. This may be related with the fact that, when approaching the ACT, the worker has already left the work situation (as it happened in most cases), an investigation to the employer is underway (in one case), or the worker shows interest in pressing charges

against the employer at the court (mentioned by one interviewee and one focus group participant). A direct intervention by the ACT to solve the problem reported at this authority by the worker is not mentioned at any point during the interviews or focus groups, not even by those that are satisfied with the assistance received.

Some workers did not take the initiative of looking for assistance and yet received it. This happened for three different reasons:

- Two Nepalese seasonal workers in agriculture were provided temporary accommodation and food, as well as support in finding a new job and securing their regularisation, as a consequence of the same inspection to the workplace jointly conducted by the ACT, the SEF and the Judiciary Police. This assistance was first ensured by the three mentioned authorities and the social security services, and later by the APF, the NGO in charge of the multidisciplinary teams for supporting victims of human trafficking. The two workers make a positive assessment of the assistance they received from all of the mentioned organisations. One of them says: "I am very pleased with the treatment they gave me (...) They have done a lot for us".
- Two migrants in an irregular situation, both of them women, received assistance from a NGO even though they never asked for it. In both cases, they got in touch with the NGOs through acquaintances and the staff heard about their situation by chance. As a result, one of them has been helped by the NGO in finding a new job and the other has been helped in finding a new job and obtaining her regularisation. Both are satisfied with the assistance received.
- A worker in the construction sector received assistance following a complaint made by a third person to the authorities. In particular, a neighbour understood that he had his face bruised due to a physical aggression by the employer and decided to report the case to the GNR. After the police intervention, the worker was directed to a local NGO that provided him accommodation, food, medical support, and help in securing his legal stay in Portugal. He is satisfied with the assistance received.

These cases suggest two promising practices. One of them is the communication between different authorities and organisations, which seems to yield positive outcomes but is not always practiced. On the other hand, some civil society organisations with intervention at the local level are especially capable of identifying and aggregating foreign workers experiencing labour exploitation.

As for the remaining nine workers interviewed, nobody learned about their situation as far as they know. Most of them mention that they talked about the issue only to colleagues or relatives. In two cases, a direct contact with organisations did not translate into help in solving the work situation. One seasonal worker approached the local branch of a catholic charity to ask for help concerning his immediate subsistence needs; it remains unclear if he gave information on his work situation to this organisation. Another seasonal worker went to the hospital to treat his finger and had to tell a short version of his working conditions to explain the injury. He believes this episode may have led to the police inspection to the workplace conducted soon after, but he did not receive any assistance besides the medical one at that moment.

Gender is likely to be relevant in several instances of seeking and receiving help. Over the previous pages we have pointed out particular situations that were experienced, or particular opinions expressed, only by men or only by women among our interviewees. Still, we find no overall gender pattern with regard to the probability or to the success of looking for support.

### 6.3. What else would have helped?

As mentioned before, the seasonal workers interviewed refer to the large distance from the rural properties where they were living and working to any place where they could get information and support. All of these workers lacked means of transportation, money or time to seek help. Improvements in access to public services would have been helpful in such case.

Among the domestic workers, one of their main claims is that the ACT should provide a more attentive and competent support, including with regard to legal issues. Two of the domestic workers approaching this authority were told they should press charges against the former employer at the court and arrange their own legal representation, with no clear information on how to go about legal procedures and representation. In this respect, one seasonal worker mentions that he could have gone to the local office of the ACT as some of his acquaintances did after their employer shut down the business and did not pay their wages. However, he believes that the ACT is helpful for claiming unpaid wages (his acquaintances eventually received the due amount with the support from authorities) but not when it comes to resolve more serious issues of working and living conditions.

Easier procedures to make a complaint and less expensive legal representation are mentioned by several workers as things that would have helped in their case, especially among domestic workers and migrants in an irregular situation. Another need expressed by most of the workers pertains to quicker administrative procedures, especially those related with their regularisation at the SEF. This is underscored by one of the interviewees:

*It takes too long...even in one year I could not have the residence permit.*

(Portugal, male interviewee from Bangladesh, retail, migrant in an irregular situation at the time of exploitation)

For the workers who received assistance from NGOs, it would have been helpful to get quicker and more successful support in finding a new job. While insufficient support in this respect is explicitly mentioned by only two workers, the actual length of the job search has been a major source of concern for others receiving assistance from NGOs. Exceptional cases are those of two workers that, after obtaining their residence permit (to which they were entitled by law as victims of human trafficking), soon found a job with the help of a multidisciplinary team for supporting victims of trafficking in human beings. Three other interviewees involved in criminal procedures of human trafficking do not report being offered assistance.

One migrant in an irregular situation observes that more significant action could be taken by immigration and labour authorities to stop situations of exploitation. In her case, these very authorities conducted an inspection to the workplace and identified several workers in an irregular situation. Various signs of abuse existed: the company provided cleaning services and yet did not employ any cleaner according to official records; it owned nine vans advertising the name of the company, in which cleaners moved from house to house; and workers were paid on a monthly basis by bank transfer. According to the worker at stake, all of these circumstances should have made it easier for the authorities to collect and cross-check evidence.

In a particular case, a domestic worker felt unsafe when she had to go to her former workplace, a private household, to collect her personal belongings. She was afraid of verbal and physical violence from the abusive employer, which had happened before; fortunately it did not happen this time. Protection by the police or another authority in this circumstance would have been helpful.

In addition to the issues explicitly mentioned during the interviews, the fact that many of the workers did not seek assistance because they feared jeopardising their source of income and

their stay in Portugal suggests that it would be helpful to better disseminate information on workers' rights and immigrants' rights, as well as provide potential complainants with more security as to their legal status.

The lack of references to other institutions during the interviews – trade unions, embassies, consulates – also suggests that these institutions could play a more active role in reaching out to victims of severe labour exploitation. Only one worker describes an experience of ever reporting a problem to a trade union. This complaint pertained to unpaid wages and was unsuccessful because the employer argued that the business had gone bankrupt, a strategy commonly used by employers in the construction sector to evade debts according to the focus group participants. When addressing the needs of people that have gone through situations of exploitation, the same participants agree on proposing the creation of a joint office ran by local NGOs to receive and deal with complaints of problems at work. This office should provide the complainant with information and support throughout the procedures necessary to get those problems solved. The participants nevertheless acknowledge that often NGOs working at the local level lack the economic resources to ensure a response of this sort.

Improving the access to public services is also mentioned in both focus groups as an urgent need. According to the participants, the staff of services such as the ACT or the social security should be better prepared to deal with cases of foreigners experiencing problems at work. According to one worker from the construction sector, these services must change their operation so that even people with little knowledge and little economic resources can see their rights respected. The participants of the focus group with domestic workers agree that frontline clerks at public services are often insufficiently informed and deter foreign workers from demanding that their rights are respected. The staff members may also lack language skills, as occurred in the case of a worker that contacted the police as described below.

#### 6.4. Experience of reporting to the police

Four workers reported the situation to the police (three seasonal workers and one domestic worker). One seasonal worker did this after several episodes of physical violence from the employer, and he reported everything in detail to the police then. He does not mention any factor that helped him report other than the very experience of physical aggression.

Another seasonal worker in agriculture decided to quit the job and contact the police together with three colleagues, suggesting that acting in group was an important part of the story. He details that they reported the situation to the police only after they were out of the workplace with no intention of going back there. He walked for 1 hour and 45 minutes carrying his luggage until he got to a place where he could take a taxi; later that day they contacted the police by telephone to report the mistreatment of workers by the employer.

Yet another seasonal worker called the police when his employer wanted to force workers to sign a new contract. His intention was not to report on the working conditions but to get support in order to prevent violence between employer and employees.

In turn, one domestic worker mentions that she was encouraged and accompanied by her boyfriend, a Portuguese national, when reporting the situation to the police. This happened after an episode of physical aggression by the employer. It was the first action taken by the worker to solve her situation; only later did she look for further assistance.

Among the workers that did not report the situation to the police, two main reasons stand out. The majority of them feared losing the job and jeopardising their stay in Portugal if they contacted the police. This is especially the case in the groups of seasonal workers and migrants in an irregular situation. While it is often associated with little knowledge about rights and legislation, several workers also claim that they did not come forward because they

anticipated that the police was not going to help them even if the law supposedly protects them as victims.

In a few cases, workers believe that their situation was not serious or violent enough to be reported to the police (mentioned by four interviewees).

The assessment of the experience by workers that reported the situation to the police is mostly negative. One seasonal worker was told by the police that they could only do something if he provided proofs and witnesses of the violent episode he was reporting. This requisite was impossible to meet:

*I was spanked inside a room and therefore nobody saw it, there were no witnesses I could bring to the police.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

As far as he knows, the police did not do anything at that time. It was only later on that the police decided to look into the case – possibly associated with the violent employer being accused of human trafficking in the meantime.

A domestic worker that was also reporting physical aggression by the employer claims that the police officers did not take her seriously. She felt discriminated because they did not take any action to protect her or to take her complaint forward:

*I was making a complaint, and did they try to help me? No, what did they do? They asked me for the phone number of my employer and told him, because they are acquainted, that I needed to go there [his house] to pick up my clothes. And I didn't have any support from the police.*

*(Se eu estou fazendo uma queixa, e eles procuraram-me ajudar? Não, o que é que eles fizeram? Pediram o número do meu patrão e comunicaram a ele, porque são conhecidos, que eu tinha que ir lá [a sua casa] pegar a minha roupa. E não tive apoio da polícia.)*

(Portugal, female interviewee from Brazil, domestic worker, regular migrant at the time of exploitation)

It is unclear whether her complaint was officially registered by the police officers, as the interviewee was not contacted in this respect ever after.

One seasonal worker reporting the imminence of physical violence by the phone mentions linguistic difficulties as a serious constraint to his asking for help:

*The police didn't help me. The two police men came by car because the workplace was too far away from the city but we couldn't speak Portuguese and they couldn't speak English.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

This worker was later contacted by the PJ within an ongoing investigation to the company. In contrast, another seasonal worker states that the police treated him well, with respect. He further observes that an inspection to the workplace was undertaken by the PJ immediately after the complaint, showing that the authorities took this complaint seriously. However, the

action of the police did not entail any type of help targeting him directly. The police did not contact him back, neither did he contact the police again.

## 6.5. Experience of court proceedings

Eight interviewees report involvement in court proceedings. Six of them worked in agriculture and the proceedings pertain to trafficking in human beings. A domestic worker pressed charges against the employer for unpaid amounts and physical violence. The employer of a worker from the construction sector is currently on trial for abusing this worker, although other accusations may be involved.

Some of the remaining workers would have liked to see their employer taken to a judge and considered pressing charges at the court themselves. This is mentioned especially in the group of domestic workers. One of them was advised to do it by the ACT but gave up due to being in an irregular situation. Discussing the possibility of resorting to courts after she had left the work situation to claim missing wages and severance pay, another worker signals several deterrent factors: the high costs of legal representation, the long time of proceedings, and the little probability of a domestic worker winning a case against an employer. She concludes by saying:

*It's very complicated, it's not possible to make a complaint... I didn't even think about that. Because there is really no chance. Until I could get something from this lady, it wouldn't be worth the efforts and the expenses. I would spend much more money than what I had to receive. So there is no point. And I know that she knows that, she is aware of that, so she will keep on doing the same thing with other persons.*

*(É muito complicado, não dá para pôr um processo... Nem sequer pensei nisso. Porque não há mesmo hipótese. Até que eu conseguisse ganhar alguma coisa desta senhora, não me valia o trabalho nem as despesas. Ia gastar muito mais daquilo que tinha a receber. Portanto, não vale a pena. E eu sei que ela sabe disso, ela tem a consciência disso, por isso vai continuar a fazer a mesma coisa com muitas pessoas.)*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

All of those involved in court proceedings state that they were treated in a respectful manner by court officials and judges. Four workers in this circumstance were able to give their testimony in their own language with the support of a translator arranged for this purpose. (

Two seasonal workers refer to defendants – owners and/or managers of the company that employed them – being put under preventive detention and surveillance by electronic bracelet. One of them describes the developments as quite positive insofar as abuses decrease once guilty individuals are condemned. Not only are those individuals unable to go on with their practices, but also it discourages other employers from engaging with recruitment agencies and instead hire workers directly.

A worker from the construction sector states that court proceedings were opened but he has not been asked to speak with the judge directly and does not know whether there has been any detention or conviction. So far he did not receive the money he was owed. He admits that the proceedings are probably still underway. He is unable to provide us with any further information on the proceedings, including whether a claim has been entered for him to get compensation and back pay from the perpetrator if convicted.

One participant in the focus group with construction workers made a formal complaint against his former employer at the Labour Court. The employer paid him the due amount after receiving an official letter from the Labour Court, thus eliminating the need to go on trial. This worker was happy with the outcome of the procedure and does not have any criticism to the way he was treated by public services along the way. Another participant in the same focus group observes that the authorities may help solve the worker's problem but do not punish or detain the abusive employer, hardly preventing the same behaviour by employers on future occasions.

The only domestic worker involved in court proceedings makes a negative assessment of the outcome. She is dissatisfied about the pre-trial agreement negotiated by her lawyer with the abusive employer because she received less than the amount she was owed, paid 500 Euros of the employer's indemnity to the lawyer (with no tax receipt), and had to drop all charges. In addition, she complains that twice the lawyer convinced her not to go to the court when the judge had requested to take her statement.

This is also the only woman among our interviewees who reported the situation to the police and was involved in court proceedings; all of the other interviewees in this circumstance are men. Such gender asymmetry is closely associated with the fact that all of our interviewees in the target group of seasonal workers, as well as all of those who are victims of trafficking in human beings, are men. Even so, the relevance of gender when it comes to interaction with the authorities calls for further research, especially considering that the reasons for this domestic worker's discontent, such as lack of action by the police and poor outcome of the pre-trial negotiation, may be related with wider gender asymmetries in society.

It is important to emphasise that some workers have only very little information about the content or the current status of the court proceedings they are involved in, suggesting insufficient or unclear communication from the authorities in this respect (mentioned by three interviewees).

## 6.6. Access to information about rights

Five workers state that they were told about workers' rights before they experienced the situation of severe exploitation. This information was provided at schools or through acquaintances, except in the case of one domestic worker that recalls listening about rights when she attended training sessions within her activities as a voluntary worker at a local NGO. She clarifies that she was aware of her rights during the abusive work situation, for instance with regard to work contract, social security contributions and fixed working hours, and this was one of the reasons why she did not stay at the job when she understood that her employer would not comply with such obligations.

*I have attended a training session like that [about workers' rights], I think this happened before and also after [the experience of exploitation], we had training sessions like that at the [name of NGO]. Because I work with [name of the professional], we work in the field with young people, we work a lot on the issue of rights... I had the notion I had those rights, so I hoped the lady employing me... that's why I stayed so little time at that job. If I didn't know how things work, I'd have – as a I told you – I'd have to stay there, enduring it. No matter how hard I wanted to do otherwise...*

*Já fui a uma formação dessas [relativa aos direitos dos trabalhadores], acho que foi antes e foi depois também [da experiência de exploração], tivemos uma formação dessas no [nome da ONG]. Porque eu trabalho em conjunto com a [nome da técnica], trabalhamos no terreno com jovens,*

*trabalhamos muito isso dos direitos... Eu tinha noção que tinha esses direitos por isso eu tinha esperança que essa senhora... por isso demorei lá tão pouco tempo. Se eu não tivesse bem a noção das coisas, tinha – como eu lhe disse – tinha que ficar lá, suportando. Porque por muito que eu quisesse fazer doutra maneira...*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

As to the other four cases, there is no apparent pattern between knowing about workers' rights and being able to leave the situation of exploitation.

Three other workers were told about workers' rights after experiencing the situation, all of them because they took the initiative of looking for this information. One of them obtained the information at the ACT, another one at a local NGO, and yet another one at a National Immigrant Support Centre (*Centro Nacional de Apoio ao Imigrante*, CNAI).

Regardless of accessing this information before or after the situation, knowledge on workers' rights is still quite limited in all of these cases, as acknowledged by most of the workers themselves.

It is especially striking that those with some contact with the authorities do not report being informed about their rights, either because the information was not provided or because they could not understand it. Some mention that before migrating they only had the notion that in Europe working conditions were better and human rights respected, and they were later appalled to find themselves in a situation that did not correspond to such expectations (three interviewees).

## 6.7. Satisfaction with current situation

Nearly half of the workers consider themselves partially satisfied with their current situation. Seven are not satisfied at all. Four others claim that they are mostly satisfied.

Examining this issue across groups, the satisfaction tends to be greater in the group of seasonal workers. This seems related with their experience of very harsh working and living conditions in agriculture upon arrival in Portugal: the main reasons mentioned for their being satisfied is the fact that they left the abusive situation, have better accommodation now, and are working under a direct contractual arrangement rather than through a recruitment agency. In other words, the bleak conditions of their initial work experience in Portugal make a quite strong contribution to the positive assessment of their current situation. One of them concludes by saying that his present job and accommodation are better than being left without job or accommodation:

*If you think about not having anything, what I have is better than that. Instead of not having anything, the situation that I'm living, the work I have... I'm satisfied: something is better than nothing.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

The key reasons for satisfaction are therefore better working and living conditions than in the past, either before or after migrating. One seasonal worker also mentions that he is satisfied because his former employer has been arrested and this has a positive exemplary effect on

the behaviour of other employers. Satisfaction with the current situation is moderate in the group of domestic workers, and especially low in the group of migrants in an irregular situation.

As to dissatisfaction, two types of reasons must be signalled. First, several workers refer to unresolved problems concerning the past situation of exploitation: they have never received the money they were owed and injustice prevailed. The only worker hiring the services of a lawyer complains that the lawyer was less interested in defending her rights than in closing the pre-trial agreement to be paid for the service (female, domestic worker). Having proper legal representation was the greatest difficulty felt by this worker, who also underscores the lack of support by the police officers that did not do anything when she came into the police station to report a physical aggression by the employer. Two other workers mention that they are dissatisfied because their abusive employers maintain the same behaviour with the current employees, something that should be stopped and punished.

Second, several workers refer to the persistence of some problems in their current work situation. These problems include the refusal of the employer to engage in a formal employment relationship, which makes it difficult if not impossible for workers to secure their legal stay in the country; precarious arrangements and frequent periods of unemployment; lack of access to welfare benefits in case of illness or unemployment; and low wages. One interviewee working at a factory says:

*I'd like to earn a decent salary, right? So that I could pay the bills and always keep a little bit aside, as a safety, otherwise you get sick and your money is over and you say: "look, I have some medicine to buy..."*

*(Gostava de receber um salário como deve ser, não é? Que não faltasse nenhum para pagar as contas e ficar sempre um pouquinho, uma reserva, para quando ficar doente não ter já terminado o dinheiro e dizer: "olha, tenho um remédio para comprar...")*

(Portugal, female interviewee from Brazil, factory, migrant in an irregular situation at the time of exploitation)

Those currently employed in agriculture also complain about poor accommodation, notwithstanding considerable improvements in comparison with previous experiences.

One worker is dissatisfied because he is unable to bring his family from Nepal. Two other interviewees express their dissatisfaction for being unable to visit their family in the country of origin, the main reason for which is the lack of economic resources:

*What I would like to happen would be, for example, that they finished the thing, the proceeding in the court, that's it... so that I can sort out my life. Well, this is a problem: I want to go to my country and see my family. And well, I don't have the money. At least, I hope I can find something else to work in.*

*(O que eu queria que acontecesse era, por exemplo, terminarem aquilo, o processo que tem no tribunal, é isso... para resolver a minha vida. Pronto, é um problema: eu quero ir à minha terra ver a minha família. E pronto, dinheiro não tenho. Ao menos que eu possa arranjar mais qualquer coisa de trabalho.)*

(Portugal, male interviewee from Cape Verde, construction, regular migrant at the time of exploitation)

One worker is especially unhappy with the fact that she goes on working through an agency that keeps a part of her wages, just like it happened in the past situation of exploitation she describes during the interview (female interviewee from Brazil, factory, irregular migrant).

## 7. Ways forward and prevention

Concerning ways forward and prevention, five recurring themes arose during the interviews and focus groups:

- taking the initiative to leave the situation of exploitation and look for another work opportunity as a necessary though difficult step;
- the benefits and risks of seeking assistance and reporting the situation to the authorities;
- the advantages of a more active role by the authorities in controlling the practices of employers, in particular through workplace inspections;
- improving access to information about workers' and immigrants' rights;
- improving the legal framework and changing administrative procedures, especially concerning regularisation at the immigration authorities, as a way of preventing problems.

If they could go back in time, none of the interviewees would accept the conditions of the work situation they describe as their worst. The majority of them state they were deceived by employers or intermediaries and this is why they found themselves in such circumstance. In turn, others mention they were to a large extent aware of the conditions in which they were going to work and live but they did not have any better option at that time. As explained below, most of the interviewees are willing to accept the same type of work, namely in the same sector and occupation, provided some specific conditions are fulfilled.

The key elements presented in this section are summarized in the following tables.

	Would accept same type of work	Advice to someone in similar situation				How to prevent
		Stay in the situation	Leave the situation	Seek assistance	Report to authorities	
PT_S1	✓	.	✓	.	.	Inspection
PT_S2	✓	.	✓	.	.	Inspection, information
PT_S3	✓	.	✓	.	.	Inspection, information
PT_S4	✓	✓	.	.	.	Regularisation
PT_S5	.	.	.	.	.	Inspection, information
PT_D1	✓	.	.	✓	✓	Inspection, judicial system
PT_D2	✓	.	.	.	.	.
PT_D3	✓	.	✓	✓	.	Inspection, information
PT_D4	✓	.	.	✓	.	Inspection, information, judicial system
PT_D5	✓	.	.	.	✓	Inspection
PT_IR1	✓	✓	.	.	.	Inspection, psychological support
PT_IR2	✓	.	✓	✓	.	Information
PT_IR3	✓	.	✓	✓	.	Regularisation
PT_IR4	✓	.	✓	.	.	Information, regularisation
PT_IR5	.	.	.	✓	.	.
PT_IR6	✓	.	✓	✓	✓	Information
PT_IR7	✓	.	.	.	.	Inspection, regularisation
PT_IR8	.	.	✓	.	.	More job opportunities, regularisation

PT_IR9	✓	.	.	.	.	Inspection, regularisation, information
PT_O1	✓	.	✓	.	.	Inspection, information

Answers		Number of interviewees	Number of focus group participants
Would accept the same type of work		17/20	.
Advice to someone in similar situation	Stay in the situation	2/20	0/6
	Leave the situation	10/20	2/6
	Seek assistance	7/20	.
	Report to authorities	3/20	.
Prevention measures	Inspection / control	12/20	6/6
	Information	10/20	3/6
	Regularisation (law and procedures)	5/20	3/6
	Judicial system	2/20	2/6
	Job opportunities	1/20	.
	Psychological support	1/20	.
	Changes in the domestic service law	.	2/6
	Increasing the competence of people working on these issues	.	3/6

## 7.1. Conditions and requisites for accepting a job

A large majority of the interviewees state they would accept the same type of work as long as some specific conditions were guaranteed. Indeed, several of them in all target groups are currently employed in a similar job as before but with better conditions.

For the seasonal workers, all of them with an experience of exploitation in agriculture, the main requisites are a direct employment contract with a property owner rather than working through an agency, satisfactory accommodation and decent wages. Two of these workers are still employed in the same sector and complain about the persistence of poor accommodation and low wages even though they are now hired directly by a property owner.

One of them clarifies that accepting the accommodation provided by the employer – shared housing with colleagues at the farm – is not compulsory in his case, but living elsewhere would be difficult due to scarce public transports and high house rent prices. The most important thing for this interviewee is the guarantee that the employer is honest and respectful, which includes paying workers the correct amount for the number of hours they actually work. As to accepting or rejecting a job proposal, he concludes:

*It's not about accepting, but it's about not having other options at the moment. You must survive.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

Another seasonal worker, currently unemployed and sick, states he would accept the same type of work today because he paid a lot of money to the recruiters that brought him from Nepal to Portugal and would not like to give up that amount as lost investment. His notion is

also that working conditions are better if there is a direct contractual arrangement between worker and property owner. This is illustrated by the case of himself and his Nepalese colleagues who worked through an agency earning 2.60 Euros per hour while Romanian and Brazilian workers employed directly by the property owner earned as much as 5 Euros per hour, although all of them worked side by side performing the same tasks.

Considering the perspective of working in the same sector, the domestic workers put their emphasis on requisites such as having a written work contract, social security contributions, holiday periods and a fixed working time. If these conditions are guaranteed, two domestic workers show their willingness to accept even a job in which they are required to sleep in the premises of the employer. One of them remarks this would be acceptable if a higher pay was offered so that she could send more money to her parents in Brazil. She observes however that this time she would be much more informed about her rights than before, in particular regarding holidays and allowances, and more attentive to the negotiation of the job content and the contract signed with the employer. In contrast, another domestic worker claims she would never accept a live-in arrangement regardless of the conditions provided.

Yet another interviewee in the group of domestic workers would accept working again as a housecleaner if she was hired to work at a fixed household, instead of moving between places as occurred while she worked for a cleaning company. All domestic workers underscore the importance of being provided with a written work contract insofar as this document clarifies working conditions – in particular wages, working time, holidays and job content – as well as facilitates their contact with labour and immigration authorities whenever needed. As put by one of them:

*Conversation gives no guarantee. There are people who give assurances with conversation but I think, after all that I've been through, that a conversation is not a guarantee to me. The only guarantee is that I have to sign a contract soon, soon. Let's talk everything right, what's going to happen, my contract and everything.*

*(Conversa não dá garantia. Há pessoas que dão garantia com conversa mas eu acho que depois de tudo o que eu passei, uma conversa das pessoas não me garante. A única garantia é que tem que me fazer o contrato logo, logo. Vamos falar tudo direitinho, o que vai acontecer, com o meu contrato e tudo.)*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

Most of the migrants in an irregular situation also signal the employer's respect for the basic rights of workers as the main requisite for accepting a similar job. This includes paying fair wages, paying the compulsory contributions for social security, signing a work contract and complying with the conditions agreed at the outset. A formal employment arrangement is a key priority due to its relevance in the application for a residence permit at the immigration authorities, be it the first permit or the renewal of a permit previously granted.

In addition, these workers have a variety of views on what would make them feel safe and protected enough, closely related with the distinct sectors in which they experienced the worst problems.

One of them claims she would not go back to providing homecare to elderly people even if she was provided with better working conditions. She might accept carrying out tasks such as cleaning, cooking and doing the laundry in a private household, as long as the work does not include caring for a dependent person. Another interviewee with experience as a domestic worker admits she would accept the same job today if she did not have any better option,

observing that abusive working conditions may be a “necessary evil” for immigrants that arrived recently or do not have a residence permit as many other employers will not hire them. Even considering her legal status is currently secured due to her being married with a Portuguese national, this worker would not want to go back to working without a formal employment arrangement – only if no other possibility was available.

One interviewee working in construction also highlights the need for a formal arrangement, including a written work contract, social security contributions and insurance against accidents at work. Wages paid on time is also a requisite for this worker. All of the mentioned conditions have been fulfilled by his current employer so far. Another interviewee mentions that being able to pay for private accommodation and earning some money to cover daily expenses and help his family in Cape Verde would be the necessary conditions for accepting a job in the construction sector again.

Insurance against accidents at work is mentioned in the focus group with domestic workers too. One participant who knows plenty of workers in this sector stresses the non-compliance of employers with the legal obligation of paying such insurance:

*The law says so, but I only know two persons, whose employers are very nice people, they're lawyers, they're well informed, those two persons have it [insurance against accidents at work].*

*(A lei manda, mas eu só conheço duas pessoas, que os patrões são pessoas impecáveis, são advogados, estão informados, essas duas pessoas têm [seguro de acidentes de trabalho].)*

(Portugal, female focus group participant from Central Africa, domestic worker, regular migrant at the time of exploitation)

One interviewee working at a factory considers accepting the same type of work provided three conditions are fulfilled: having a direct employment contract with the factory rather than through a recruitment agency, working only from Monday to Friday, and being paid the due amount on the right time. Although she has left the work situation described as her worst, she has not yet been able to find a job in which these three conditions are fulfilled.

Finally, three workers (in an irregular situation) state they would not accept the same type of work at all. One of them, employed at a bar, is still in the work situation described as her worst. The other two moved to situations they consider to be better – one from working in agriculture to working at a restaurant, another from working at a restaurant to working in a cleaning company – and do not consider going back to the previous sector.

## 7.2. Advice to other workers in a similar situation

Presented with the possibility of someone with similar work problems coming to them for advice, the interviewees give answers that can be organised according to two main issues. One of them is whether the worker at stake should stay in the situation or take the initiative to leave it. The other issue pertains to advising that person to seek assistance and/or report the situation to the authorities.

Staying in the situation is recommended by only one seasonal worker and one migrant in an irregular situation. Even in these cases, such option is conceived as temporary or instrumental. The seasonal worker argues that keeping a job for a long period enables workers and employers to develop their mutual acquaintance with benefits for both sides. The migrant in an irregular situation is especially concerned with the implications of quitting the job before an alternative source of income is guaranteed:

*If they approach me, I'll say, "you have to endure all of that, first of all. You have to endure it because you're in a condition in which you don't have any other option. You have to endure it. You have to calm down whenever they get angry. You must have the patience and the courage to endure all of this. This is not going to last forever. This will change; sooner or later, but it will change".*

*(Se chegar perto de mim vou dizer, "você tem que suportar tudo isso, primeiramente. Você tem que suportar porque você está numa condição que agora não dá. Tem que suportar. Tem que acalmar cada vez que eles se zangam ou deixam de zangar. Tem que ter a paciência e a coragem para suportar tudo isso. Isso não vai durar para sempre. Isso vai mudar mais cedo ou mais tarde, mas vai mudar")*

(Portugal, female interviewee from Cape Verde, domestic work/homecare migrant in an irregular situation at the time of exploitation)

Leaving the situation would be the advice given by half of the interviewees. This answer can be found across all target groups. Still, it is less frequent among domestic workers. Only one worker in this group is explicit about telling someone with similar work problems to take the initiative of leaving, and she admits finding a job with better conditions may be impossible if the worker lacks a valid residence permit from the immigration authorities:

*If she had documents I would advise: "do not accept this kind of work". Because it's a lot of humiliation for a person, it's a lot. And it hurts... Sometimes you come home, sit down and think... Sometimes tears drop because it's too much suffering one person being mistreated by another. I would advise: do not accept, or leave. If you have no documents, well, that's another thing.*

*(Se ela [a pessoa] tivesse documentos eu aconselhava: não aceita esse tipo de trabalho. Porque é muita humilhação para uma pessoa, é muita mesmo. E dói... Às vezes você chega em casa, senta e pensa... Até às vezes cai lágrima porque é muito sofrimento uma pessoa ser maltratada por outra. Eu aconselhava: não aceita ou larga. Se não tens documentos, olha, isso aí já é outra coisa.)*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

One interviewee working at a bar makes a similar reflection with regard to the constraints posed by poverty:

*I would advise this person to look for help and to leave. I don't know if the person really needs it because he/she has neither home nor food. Because when we do not have these things, we have to... to stay and submit to everything... we have to accept and bend our head, but...*

*(Eu aconselhava essa pessoa a procurar ajudar e a para sair. Não sei se a pessoa está mesmo a precisar porque não tem nem casa nem comida porque quando não temos essas coisas temos que... ficar e sujeitar a tudo. Tudo o que nos vem temos que aceitar e baixar a cabeça mas...)*

(Portugal, female interviewee from Central Africa, restaurant, migrant in an irregular situation at the time of exploitation)

Difficulties in accessing jobs in which employers fully comply with their legal obligations are acknowledged by interviewees in all target groups.

One interviewee working in agriculture states he would help the person at stake look for a job with better conditions. This interviewee argues that workers should have more information about their rights and where to go for support, adding that some people however are not literate enough to claim their rights even when they have the right information. He refers to foreign workers who resign themselves to work problems because they do not have a clear notion of what is happening and what possibilities exist to actually change their situation; the case is even more problematic for those who cannot speak English and/or Portuguese or who believe everything they are told. Another seasonal worker would advise a person experiencing similar problems to

*learn the language and know about how the system works, because the system here is very different from our own.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

In the case of a few migrants in an irregular situation, the advice of leaving the situation is explicitly associated with giving up on the expectation of solving the problems at that particular job (three interviewees). Concerning unpaid wages, for example, one interviewee in the construction sector draws on a past experience to conclude that often workers can only expect to receive the missing amount from employers if they resort to direct threats or physical violence:

*He [employer] paid the people that confronted him physically. But those like me, who just wait and talk, he hasn't paid any of those.*

*(Ele [patrão] pagou às pessoas que foram a confronto físico com ele. Mas os que ficam assim como eu, à espera com conversa, desses não pagou a ninguém.)*

(Portugal, male interviewee from Guinea-Bissau, construction, migrant in an irregular situation at the time of exploitation)

Engaging in violence can get the worker into troubles with the authorities. All things considered, this interviewee believes the best to do is just changing to a different job.

Another interviewee from the construction sector also grounds his advice on personal experience:

*I've been through that, so I can give some advice to the others. I would say, "don't get into that arrangement, go for another work you find, with a contract, this way you'll know you're working..." That work I was doing was... how can you say?... it was like slavery. Yes. What I've been through, I don't wish anyone the same.*

*(Eu já passei por isso, já tenho conselho para dar aos outros. Dizia assim, "não te metas nesse negócio aí, vais assim num trabalho que encontrares, com contrato, isso já sabes que uma pessoa está a trabalhar..." Esse trabalho que eu andava era... como se diz?... era tipo escravidão. É. Isso que eu já passei, não desejo a ninguém.)*

(Portugal, male interviewee from Cape Verde, construction, regular migrant at the time of exploitation)

Seeking assistance would be an advice given by seven interviewees. This comprises about half of the interviewees in both the group of domestic workers and the group of migrants in an irregular situation, but none in the group of seasonal workers. Such difference is possibly explained by the very limited experience of the latter with seeking assistance themselves. In comparison with the other target groups, the seasonal workers show little knowledge and trust with regard to institutions that might provide assistance.

In contrast, four out of the seven workers that recommend seeking assistance have a personal experience of doing so. The type of initiative mostly advised by interviewees consists in looking for complete and accurate information on one's own rights as a worker and as an immigrant in Portugal. For this purpose, workers recommend others with similar problems to contact the ACT, a National Centre to Support Migrants' Integration (*Centro Nacional de Apoio à Integração de Migrantes*, CNAIM), a Local Centre to Support Migrants' Integration (*Centro Local de Apoio à Integração de Migrantes*, CLAIM) or a local non-governmental organisation providing support to people. One migrant in an irregular situation underscores that sometimes acquaintances give contradictory information, therefore those who need support should resort to an organisation to make sure they are correctly informed.

Not more than three workers would advise reporting the situation to the authorities. Only one of them (a domestic worker) did it herself, and she recommends workers to go all the way up to court proceedings if necessary; she is unsatisfied with the outcome of the pre-trial agreement negotiated by her lawyer, as described earlier in this report. Another domestic worker recommends reporting the situation to the ACT. According to this worker, immigrant organisations may provide an important support to workers when it comes to making a formal complaint. This is also observed by one interviewee in the group of migrants in an irregular situation.

Drawing on her experience at a housecleaning company, one interviewee remarks that the option of reporting the situation to the authorities, while it would be fair to punish the employer's behaviour, entails risks for the people working at the company, including jeopardising their job and their stay in Portugal if they are migrants in an irregular situation. Furthermore, she does not believe that reporting the case to an official body stops the employer from abusive practices, as illustrated by her own experience of a workplace inspection. She concludes:

*A complaint does not solve what he [the employer] does, but it can worsen the situation of the people working there, and maybe that's the only source of income in the family. I was in this situation. I was lucky that they [the authorities] didn't catch me, that nothing happened... Because it's not only the issue of losing your job. Of course that's bad. But what if they send me away from the country?*

*(Uma queixa não resolve aquilo que ele [empregador] faz, mas pode piorar a situação das pessoas que estão lá, naquilo que é o único sustento da família se calhar. Eu estive numa situação assim. Tive sorte que [as autoridades] não me apanharam, que não aconteceu nada... Porque não é só perder o emprego. Isso é óbvio que é mau. Mas e se me mandam embora do país?)*

(Portugal, female interviewee from Ukraine, cleaning, migrant in an irregular situation at the time of exploitation)

A similar reasoning is likely to be shared by other interviewees in all target groups, considering that many of them did not report their situation because they were in an irregular situation as shown in chapter 6.

### 7.3. Enforcement of the law

Asked about changes that could prevent such work problems and help people come forward for support, the interviewees mainly call for measures in three respects.

First, the majority of them consider that more efforts should be expended to enforce the law, in particular ensuring that employers fulfil their obligations of providing a written work contract to foreign workers, pay wages and social security contributions on time, comply with the working time established at the outset of the employment relationship, and respect the rights to holidays, allowances, parental leave and protection in case of illness or accident at work. According to twelve of the interviewees, this would imply that the authorities undertook more frequent and efficient workplace inspections. Such position is expressed by most of those in the groups of seasonal workers and domestic workers, as well as three workers in the group of migrants in an irregular situation.

One domestic worker remarks that authorities should pay particular attention to companies providing services to other companies or to private households. Intervention in this regard is likely to be relevant at a wider scale, considering that several interviewees in all target groups – working in sectors as distinct as domestic service, agriculture and industry – experienced severe labour exploitation while working through an intermediary company or agency.

In addition, one interviewee employed as a domestic worker argues that labour authorities should do more than simply undertaking a workplace inspection when there is a complaint. She comments on the inertia of the authorities to act in cases in which several inspections have been conducted and a number of indications exist that the company is not respecting workers' rights:

*I think they make the inspection because somebody reported the situation, so they must act. Very good. But they seem uninterested, it is as if: alright, let's go there because we have to, it's not because things need to be put in order... Maybe you can tell me that people working at the SEF or any other service are paid too little, they are not happy to be working; well they should move to another occupation then, I can take their place and they go and clean houses to give it a try and see if they like it.*

*(Acho que eles fazem a inspecção porque foi feita a denúncia, eles têm de atuar. Sim senhora. Mas parecem sem vontade, parece que é: pronto, temos que ir porque temos de ir, não é porque faz falta pôr tudo na ordem... Se calhar pode-se pensar que eles, do SEF ou de outro lado, estão mal pagos, não têm vontade de trabalhar; então mudem de profissão, eu vou para lá, eles vão limpar casas para experimentar a ver se gostam.)*

(Portugal, female interviewee from Ukraine, cleaning, migrant in an irregular situation at the time of exploitation)

The participants of the focus group with domestic workers also express the view that the authorities should play a more active role in overseeing employers' practices in order to prevent problems and protect workers. According to the three participants, immigration authorities and social security services should examine the situation as soon as they receive the registration of a new foreign worker, caring about the actual experiences of people rather than just caring about the documents:

*With respect to the SEF, I think they don't care at all. What they want is a piece of paper proving that I have some income and that I can live here, and that I can have that residence permit. It doesn't matter what you go through. It doesn't matter. For them, it doesn't. What matters is the piece*

*of paper. You prove in this paper that you earn a certain amount every month and you can go on living in this country because you have money for that. [...] But what we go through to have those documents, to produce those documents, nobody wants to know at all.*

*(Com relação ao órgão que é o SEF, acho que eles não estão nem aí. Eles querem é um papel que comprove que eu tenho uma renda e que eu posso viver aqui, e que eu posso ter aquele visto de permanência. Não interessa o que você passa. Não interessa. Para eles não interessa. O que interessa é o papel. Você comprova aqui no papel que tem uma renda X todo o mês e você é capaz de continuar aqui no país e vivendo aqui porque você ganha para isso. [...] Agora, o que passamos para obter esses documentos, para gerar esses documentos, ninguém quer nem saber.)*

(Portugal, female focus group participant from Brazil, domestic worker)

In the focus group with construction workers, all participants put an emphasis on intervention and more control by the authorities to ensure compliance with workers' rights. These three participants claim to know several cases in which labour inspectors have been bribed by the employer and/or have told the employer in advance about an upcoming inspection, thus enabling the employer to make sure problems were covered up and workers in an irregular situation were out of the workplace at the time of the inspection. Considering these events, the focus group participants argue that labour inspectors should work to defend the interests and rights of workers instead of those of employers. A stricter control over money transfers is suggested as an additional measure of prevention.

One participant in this focus group also observes that employers and subcontractors have to be registered at the tax office to operate, so it should not be difficult for authorities to cross-check data and look into the practices regarding wages, social security, insurance and other rights established in the law. The same participant underscores the positive impact of punishing abusive employers as it dissuades other employers from doing the same, insofar as they start fearing the consequences – the penalty and the public discredit – in case they are caught. He also refers to the contribution of control mechanisms to fight social inequality:

*The subcontractor is getting rich at the expense of those poor guys. Many of them go to work, come home, they don't have money to eat, nor to feed their children, nor to pay the rent, nothing, while this subcontractor drives around in expensive cars, and he goes for holidays, and he eats the best food, he just has to grab and enjoy. There is a lack of... a lack of control in the country. The country is out of control!*

*(Esse subempreiteiro está a encher-se de dinheiro à custa de pobres coitados. Muitos vão trabalhar, vêm para casa, não têm dinheiro para comer, nem para dar ao filhos que comer, nem pagar a renda, nem para nada. Este subempreiteiro com brutas carros, e a passear, a comer do bom e do melhor, é só sacar e passear. Isto é uma falta de... uma falta de controlo no país. O país é descontrolado!)*

(Portugal, male focus group participant from Cape Verde, construction, regular migrant at the time of exploitation)

#### **7.4. Access to information**

Half of the interviewees also believe that the access to information about workers' rights ought to be improved, including efforts by the authorities and civil society organisations to better

disseminate information and maintain a regular contact with workers. Changes in this respect are recommended by several workers in all target groups.

One interviewee working in agriculture observes that regular contact with the workers is key to ensure a timely intervention:

*There should be someone listening to workers, so that if something is going wrong... and not like, "Oh, we'll take care of that later": there should be quick action, not like you have to wait for six months or one year. Giving medicine after somebody is already dead is useless.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

Another interviewee with experience in agriculture recommends the organisation of public sessions by the authorities, open to all workers, to inform them about rights, risks and where to go for support if they ever need it. The same interviewee recommends consulates to play a more relevant role in disseminating information on rights and risks:

*People should be warned through the consulate, that's where this type of information should be.*

(Portugal, male interviewee from Nepal, agriculture, regular migrant at the time of exploitation (seasonal worker))

The idea of awareness campaigns is also advocated by other workers. One of them suggests these campaigns to target both workers and employers to ensure that all of them are better informed about the rights of migrant workers. According to another interviewee, an awareness campaign could be successfully undertaken by joining efforts between ourselves (the SELEX II research team), local civil society organisations, embassies and consulates from countries of origin, and immigrant workers themselves. This interviewee explains that such campaign might comprehend general information about life in Portugal as well as support in going through the necessary administrative procedures, in particular concerning the immigration authorities.

One interviewee with experience of working at a restaurant recommends relevant information to be disseminated through television and internet. She further observes that some civil society organisations could provide information about workers' rights and working conditions by approaching people on the street or even going door to door. In her opinion, this information should contribute to make people aware of the risks and unwilling to accept jobs under certain conditions.

One domestic worker observes that the lack of knowledge among many domestic workers is used by the employers for their own benefit:

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

*(Os patrões também se aproveitam disso, de saber que a pessoa não é informada. É o que fazem os patrões... Na maioria do trabalho doméstico, os patrões sabem quais os direitos da empregada, mas fazem de conta que não sabem porque aproveitam-se da fragilidade da pessoa e usam*

*isso a seu favor. Portanto, se houver informações isto vai acontecer menos. Vai continua a acontecer sempre, mas menos.)*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

All participants in the focus group with domestic workers agree on the benefits of disseminating information so that foreign workers are more aware of their rights and where to look for support if necessary. The lack of knowledge exposes workers to threats and coercion, as directly experienced by one participant and corroborated by indirect experiences of the other two. The former observes that immigrants are informed about duties and restrictions when they arrive in Portugal but not about their rights. Another participant in this focus group argues that foreign workers themselves do not take the initiative to seek information or help, thereby contributing to the persistence of the problems. In her opinion, a better dissemination of information on rights and services can sometimes be insufficient because some people, either workers or employers, do not give credit to what they are told.

## 7.5. Improvements in the legal framework and administrative procedures

Five interviewees – four of them in the group of migrants in an irregular situation and one in the group of seasonal workers – call for improvements in the legal framework and/or in the administrative procedures to ensure that the regularisation of immigrants becomes fairer, simpler and quicker. According to these interviewees, difficulties in regularisation are a main cause or contributor to the subjection of foreign workers to exploitation, and reducing such difficulties would be an important measure of prevention.

One of these interviewees underscores that foreign workers are required to register at the SEF, the tax office and the social security services, but they can only complete their regularisation after they start working, which makes them vulnerable to demands by the employer as any challenge to the employer's authority may jeopardise their regularisation procedure. As summarized by yet another interviewee:

*The problem is that everything depends on a work contract.*

*(O problema é que tudo fica dependente de um contrato de trabalho.)*

(Portugal, female interviewee from Brazil, restaurant, migrant in an irregular situation at the time of exploitation)

In fact, having a work contract may not be enough for some foreign workers. As detailed in chapter 4, one interviewee was told by the immigration authorities that the work contract she presented for the purpose of regularisation was suspected to be fraudulent because it pertained to domestic service. Based on the experience of herself and others, this interviewee calls for reflection on changing the law in a way that prevents immigrants from falling in the dangerous cycle of no formal employment and no regularisation.

The negative implications of complicated regularisation procedures are also mentioned by an interviewee working at a restaurant, who concludes that the authorities are well aware of the work problems experienced by foreigners in the meantime:

*These things are happening; these things are open secrets.*

(Portugal, male interviewee from Bangladesh, retail, migrant in an irregular situation at the time of exploitation)

While these interviewees are unable to propose concrete changes in the existing legal framework, their observations suggest that foreign workers would have better conditions to protect themselves from abuse if they had all papers in order when they start working rather than only later on.

One interviewee working in construction also remarks that procedures at the immigration authorities ought to be characterised by clearer information and less fees for requesting documents and submitting applications. A domestic worker explains that the high fee charged by the authorities is one of the main reasons why she has still not submitted her request for the Portuguese nationality after living in this country for decades:

*I am still on a residence permit, because the Portuguese nationality, although I did my studies in the Portuguese system, I did everything, and it [Cape Verde] was a Portuguese colony... sometimes I don't understand why they complicate so much... Now the cost has been raised to 270 Euros: it's not easy. And every month I keep postponing it and I still haven't got the nationality, I'm still on a residence permit. 270 Euros only to request the nationality – they may not approve it.*

*Continuo com a residência, porque o documento, a nacionalidade portuguesa, embora eu tenha estudado no sistema português, tenha feito tudo, e [Cabo Verde] era colónia portuguesa... às vezes eu não percebo porque é que complicam tanto... Agora já foi para 270 Euros: custa tirar. E todos os meses vou adiando e ainda não tenho a nacionalidade, continuo com a residência. 270 Euros para pedir – que podem não aprovar.*

(Portugal, female interviewee from Cape Verde, domestic worker, regular migrant at the time of exploitation)

The three participants in the focus group with domestic workers also criticise bureaucratic difficulties and complications at the immigration authorities when foreign workers apply for a residence permit, especially if they are not well informed about the laws and procedures concerning regularisation or their rights as immigrants. In particular, the requirement to pay a fine for the time of irregular stay in Portugal – even if this is not the worker's fault but instead a consequence of the employer's unwillingness to engage in a formal employment relationship, as experienced by two participants – leads some workers to drop or postpone their application for a permit. In this view, improvements should include a guarantee that unfair penalties are not imposed on the worker along the way.

Two participants in this focus group also complain about the legal framework that regulates domestic service in Portugal (both domestic workers, female). One of them claims this legal framework is seriously outdated:

*The law must be changed, and the information must be better disseminated. There are always employers thinking the domestic worker hasn't got the right to anything, that they only exist to work.*

*(Tem que alterar a lei e divulgar mais. Sempre há o facto de algumas patroas que pensam que empregada doméstica não tem direito a nada, servem só para trabalhar.)*

(Portugal, female focus group participant from Central Africa, domestic worker, regular migrant at the time of exploitation)

This worker refers to the case of legislation in other countries to show that the legislation in force in Portugal does not provide domestic workers with sufficient protection, especially with

regard to the limits of work demands. Such gap leads to frequent overload as domestic workers must do everything the employer orders, as experienced by this focus group participant at a household where she cared for two autistic children and carried out all domestic chores.

The participants in the focus group with construction workers believe that foreign workers in an irregular situation can always resort to the authorities to get information, but they will not be able to solve their problems at work until they obtain valid residence documents.

In addition, one participant in this focus group comments on the implications of the greater or lesser attention paid to workers' rights by the national government:

*In the times of the previous government [PSD-CDS/PP coalition, 2011-2015], my employer told me, "This government is governing for the employers. So the workers can't complain too much." This was what my employer told me, talking to me just like we're talking here today. And why? The government talks about the employers, you work, the employer pays if he wants to, if he doesn't want to pay there's nowhere you can go to complain...*

*(No anterior governo [coligação PSD-CDS/PP, 2011-2015], o meu patrão disse-me, "Este governo que está a governar é para os patrões. Portanto, os trabalhadores ali não podem refilar muito.." O meu patrão disse mesmo, assim como estamos aqui. E porquê? O governo está a falar dos patrões, você trabalha, o patrão paga se quiser, se não quiser você não tem onde queixar.)*

(Portugal, male focus group participant from Cape Verde, construction, regular migrant at the time of exploitation)

## 7.6. Other measures to prevent work problems

Other types of measures are proposed by smaller numbers of interviewees. This is the case of changes in the operation of the judicial system. One domestic worker highlights that the access to legal advice and representation should be easier and cheaper, preferably provided by public services. Another domestic worker also refers to the bureaucratic, expensive and lengthy features of the judicial system whenever a worker reports the situation to the authorities. This interviewee further remarks that it is very difficult to prove the grounds for the complaint, especially if the employment relationship has been kept informal as it often happens in domestic service.

As to the problem of high costs for legal representation and lengthy procedures of the judicial system, one participant in the focus group with construction workers argues that both the ACT and the courts could be more active in promoting agreements between employer and worker as a pre-trial solution. This was a direct experience of another focus group participant (construction worker) with a successful outcome.

In the group of migrants in an irregular situation, one interviewee believes that the existence of more job opportunities would contribute to prevent problems. Another one observes that people experiencing this type of problems at work should start by looking for a psychologist, as they would benefit a lot from the professional support of a psychologist, as well as the support of their own family, if they are to solve and overcome the problems:

*Because you get angry, you start thinking a lot of things... Sometimes there are bad thoughts about some people. Mainly, psychologists understand*

*these reasons and they calm people down and say what to do in a case like this one and they help a lot.*

*(Porque a gente fica zangada, fica a pensar muitas coisas... Às vezes pensam mal das pessoas. Principalmente, os psicólogos entendem essas razões e acalmam as pessoas e dizem o que fazer num caso desses e ajudam muito.)*

(Portugal, female interviewee from Cape Verde, domestic work/homecare migrant in an irregular situation at the time of exploitation)

All participants in the focus group with domestic workers stress the need for increasing competence among people working on these issues. Based on several statements during the focus group, this includes policy-makers as well as the staff of relevant services such as immigrant and labour authorities.

## 8. Conclusion and any other observations

A. Summarising key points and recurring themes arose during the interviews and focus groups in each section of this country report:

✓ About risk factors for severe labour exploitation:

- the irregular situation in the country as the most prevalent risk for severe labour exploitation of migrant workers;
- the economic vulnerability of migrant workers and their urgent need to get an income making them accept any kind of work, regardless of the working conditions;
- the expectation of a better future eventually compromising the present: migrants
- tend to conform to situations of severe labour exploitation in order to try to improve their own and their family's wellbeing and living conditions in the future;
- the search for profit by the employers as an overarching goal, thus compromising respect for workers' rights.

✓ In what concerns the workers' experience of severe labour exploitation:

- the absolute need of a work contract rendering migrant workers very vulnerable
- in their relation with the employers;
- poor working conditions mainly characterised by: very long working hours, no payments to social security, low wages, and few breaks;
- poor accommodation conditions experienced by all those working in agriculture, and by some in domestic service;
- non-compliance by the intermediary/recruiting agencies of the initially promised conditions, namely in the case of agricultural workers signalled as victims of trafficking in human beings;
- mismatch between the initial agreement at the outset of the employment
- relationship and the actual working conditions;
- frequent verbal violence and threats by the employers;
- employers taking advantage of workers' economic constraints;
- challenging the employer not worthwhile;
- scarce resources making it more difficult the confrontation with employers;
- feeling of helplessness.

✓ With regard to asking for help:

- the fear of negative consequences if an attempt is made to seek assistance or to report the situation to the authorities, in particular losing the source of income, being expelled from Portugal and suffering violence by the employer;
- the relevance of having or not having valid documents from the immigration authorities;
- the lack of knowledge about workers' rights, immigrants' rights, and how and where to look for the support needed;
- difficulties in ensuring that former employers comply with their pending obligations, especially concerning wages and social security;
- the quality of the assistance received, including limitations in the capacities and skills among the frontline staff of public services;
- several reasons exist not to report the situation to the police, including lack of trust in the capacity of the police or other authorities to solve the problem at stake, and fear of getting into troubles with both the employer and the authorities.
- the high costs of legal representation and the long length of court proceedings.

✓ Concerning ways forward and prevention:

- taking the initiative to leave the situation of exploitation and look for another work opportunity as a necessary though difficult step;
- the benefits and risks of seeking assistance and reporting the situation to the authorities;
- the advantages of a more active role by the authorities in controlling the practices of employers, in particular through workplace inspections;
- improving access to information about workers' and immigrants' rights;
- improving the legal framework and changing administrative procedures, especially concerning regularisation at the immigration authorities, as a way of preventing problems.

B. Summarizing the specificities of labour exploitation among victims of trafficking in human beings:

Six persons among our interviewees are officially signalled as victims of trafficking in human beings. This is the case of the five seasonal workers interviewed, as well as one interviewee in the category of migrants in an irregular situation. They are all men coming from Nepal. Another similarity is that all of these situations pertain to the sector of agriculture, which has particular implications as to the experience of exploitation, first of all regarding the location of workplace and accommodation. The interviewees refer several times to their isolation due to the scarcity of public transportation and the large distance that separated the rural properties where they worked and lived from places where information or support could be accessed.

Four of these workers were recruited by an individual or a company involved in the trafficking scheme while they were still in their country of origin; this individual or company arranged their work permits and travel plans in exchange for money. The two other workers entered Portugal coming from other countries of Europe to which they had migrated first; once in Portugal, they got in contact through acquaintances with the employer/intermediate agency that would subject them to conditions considered as trafficking in human beings. All of the six interviewees report not being able to speak or understand any Portuguese when they arrived in this country.

Two of them had their personal documents retained by the traffickers, while the others were allowed to keep their personal documents with them.

In three of the cases, contact with the police was a result of their own initiative to report the situation. In the other cases, they were identified as victims after visits from the authorities to their workplaces for an inspection.

At the time of the interview, four of them report being involved in legal procedures against the owners or managers of the company that employed them.

Regarding the mechanisms and effectiveness of the assistance received, it is important to clarify that persons identified as victims of human trafficking have a set of rights established by law, including the right to a residence permit. Once they have the residence permit, they can live and work in Portugal in the same conditions as the other foreigners with a residence permit. They are not entitled to specific housing or social benefits other than the benefits accessible to all foreigners. However, mechanisms exist to ensure technical support, reception, support, monitoring and referral. These services are provided by state and civil society bodies working in articulation, and supported by public funds. (Details on the legal and institutional framework of trafficking in human beings, including national case law and assistance mechanisms, can be found in chapter 3.)

Three of our interviewees signalled as victims of trafficking in human beings describe receiving a substantial and articulated support, especially from non-governmental organisations, with regard to finding accommodation, finding a job, and solving their administrative procedures at the immigration authorities. The three other interviewees do not report being offered assistance although they have cooperated in criminal procedures of human trafficking upon request by the authorities, including by giving their testimonies in court.

The six interviewees show to possess little or very little information on the progress of the legal procedures involving them, their position and rights in these procedures and elsewhere, and what they can expect as a compensation for the period of exploitation.

At the time of the interview, two of them still worked in agriculture although in better conditions than before, three of them worked in other sectors, and one of them was unemployed.

C. Seven main themes emerge from a cross-thematic analysis of our research findings, in terms of dominant issues, recurring arguments, and overarching topics:

1. the regularisation (associated to the need of a work contract) as the key priority, for which migrant workers often accept poor working conditions and abuse;
2. scarce resources and economic vulnerability – the absolute need of a salary;
3. employers that search for profit as an overarching goal and take advantage of migrants' undocumented situation and material need;
4. the fear of losing their source of income, being expelled from the country and suffering violence by the employer as reasons for not confronting the employer, reporting the situation to the authorities or ask for help;
5. the lack of knowledge and information about workers' and immigrants' rights and how and where to seek assistance;
6. the wide gap (lack of mutual knowledge, mistrust, fear,...) between migrant workers and the eventual, both state and civil society, support organisations;
7. an institutional and legal framework that does not fully respond to the existing needs and the problems experienced by migrant workers.

D. By means of concluding remarks, it is relevant to confront the views of professionals (according to the national findings of SELEX I) and the views of the workers heard during the focus groups conducted under the scope of the present SELEX II, upon the most important factors to migrant workers who are victims in the aftermath of severe labour exploitation.

The importance accorded to different factors diverges significantly among the two groups, i.e. professionals and workers:

- 'being safe and being protected against further victimisation' is the only factor to which both groups accord high importance – the migrant workers putting the emphasis on the need to leave the situation of exploitation; to achieve this goal greater awareness of their rights and the opportunity to find a new job with better conditions are crucial;

- two other factors highly valued by the professionals – ‘for their family to be safe’ and ‘being in a position to support other family members economically’ – did not deserve recognition in either of the focus groups (even if the second factor was mentioned in several interviews);
- conversely, three factors were accorded much higher importance by the migrant workers than by the professionals: ‘to be able to stay and to make a living in an EU country’ (and in Portugal in particular); ‘to see that offenders are held accountable and that justice is done’; and especially ‘receiving compensation and back pay from employers’, ensuring respect for their rights.

## ANNEX 1 – Desk Research

1 LEGISLATION and POLICY				
		Yes	No	Supporting information
1.1	<p>Based on a review of the information provided in Annex III published by FRA in 2015 - '<i>Criminal law provisions relating to labour exploitation</i>'<sup>21</sup> – have there been any changes to or new legislation in the area of criminal law relating to labour exploitation?</p> <p><b>If yes</b>, please provide information under 'Supporting information' (i.e. which law; explanation of relevant provision and reference).</p> <p><b>If no</b>, is there any draft legislation underway?</p>		X	<p>The Immigration Law (Law 23/2007) has been amended through Law 102/2017,<sup>22</sup> following the Government's Law Proposal 86/XIII<sup>23</sup> that aimed to transpose the Directives 2014/36/EU, 2014/66/EU and 2016/801/EU into domestic law. The field of application of penal provisions in the Immigration Law now includes the new situations resulting from the transposition of the Directives 2014/36/EU and 2016/801/EU. According to the Article 56-F of the new law, it becomes applicable to seasonal workers the current Article 185-A, in which Clause 4 establishes a penalty of imprisonment between one and five years for the agent that uses the labour of a foreign citizen in irregular situation in particularly abusive or degrading conditions. Identical is the case of the Article 124-G(2), which now establishes the same penalty for employers of third-country nationals without a residence permit that are transferred within the company.</p>

<sup>21</sup> Please download Annex III from <http://fra.europa.eu/en/publication/2015/severe-labour-exploitation-workers-moving-within-or-european-union>

<sup>22</sup> Portugal, Law 102/2017 making the fifth amendment to the Law 23/2007 of 4 July which approves the legal regime of entry, permanence, exit and removal of foreigners from national territory, and transposition of the Directives 2014/36/EU of 26 February, 2014/66/EU of 15 May, and 2016/801/EU of 11 May (*Lei n.º 102/2017 que procede à quinta alteração à Lei n.º 23/2007, de 4 de julho, que aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional e transpõe as Diretivas 2014/36/UE, de 26 de fevereiro, e 2014/66/UE de 15 de maio de 2014, e 2016/801, de 11 de maio de 2016*), 28 August 2017.

<sup>23</sup> Portugal, Government's Law Proposal 86/XIII (*Proposta de Lei 86/XIII Assembleia da República*. Available at: [www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=41399](http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=41399)).

1.2	<p>Are legal provisions or measures in place to ensure that employers convicted of <b>criminal forms</b> of labour exploitation will be excluded from entitlements to public benefits, aids or subsidies, including EU funding managed by Member States?</p> <p><b>If yes</b>, for what time period is such exclusion provided?</p>	X	<p>The exclusion of employers criminally condemned for labour exploitation from certain benefits, aids or subsidies is established in the following legal provisions:</p> <ul style="list-style-type: none"> <li>- Penal Code,<sup>24</sup> Articles 11(2) (liability of legal persons) and 90-A (penalties applicable to legal persons). Article 90-A(1)(c) establishes that, for the crimes under Article 11(2), including those of Articles 152-A (mistreatment), 152-B (violation of safety rules), 159 (slavery) and 160 (human trafficking) of the Penal Code, which include forms of labour exploitation, legal persons and equivalent entities can be punished with additional penalties namely the suspension of the right to benefits, aids or subsidies. The Article 90-I adds that the suspension of the right to benefits, aids or subsidies granted by the State or other public legal persons is applicable for a period between one and five years.</li> <li>- With regard to EU funding, the Decree-Law 159/2014 of 27 October<sup>25</sup> on the application of Operational Programmes and Rural Development Programmes financed by the European structural and investment funds (ESIF), comprising the European Regional Development Fund (FEDER), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), for the programming period of 2014-2020, establishes in Article 14(5) that beneficiaries condemned in proceedings for a criminal or administrative offence involving the violation of legislation about the work of minors and discrimination in work and employment, namely on the basis of sex, disability and existence of aggravated health risk, cannot access financing from the ESIF for a period of three years starting from the final disposal of the proceedings, except if the penalty applied within those proceedings results in a larger period. This is the case in situations of</li> </ul>
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<sup>24</sup> Portugal, Penal Code (*Código Penal*), 15 March 1995, with later amendments. Updated version available at: [www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=109&tabela=leis](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis).

<sup>25</sup> Portugal, Decree-Law 159/2014 establishing the general rules for the application of Operational Programmes and Rural Development Programmes financed by the European structural and investment funds, programming period of 2014-2020 (*Decreto-Lei n.º 159/2014 que estabelece as regras gerais de aplicação dos Programas Operacionais e dos Programas de Desenvolvimento Rural financiados pelos Fundos Europeus Estruturais e de Investimento, para o período de programação 2014-2020*), 27 October 2014. Available at: <https://dre.pt/web/guest/pesquisa/-/search/58605739/details/normal?q=Decreto-Lei+n.%C2%BA%20159%2F2014>.

				<p>severe labour exploitation, for which the criminal law establishes a period of five years.</p> <p>- Identical situation occurs with the Decree-Law 108/2015 of 17 July<sup>26</sup> creating the Inclusive Employer Certificate, in which Article 5(1) establishes that the granting of financial support depends on the fulfilment of several requisites including not having been condemned in proceedings at criminal or administrative level for the violation, on purpose or with serious negligence, of legislation regarding discrimination in work and employment over the last two years, except if a larger period results from the penalty applied within those proceedings, in which case the latter prevails.</p> <p>None of these legal provisions, except for the Article 160 of the Penal Code, makes an explicit reference to labour exploitation, although they are applicable to it.</p>
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<sup>26</sup> Portugal, Decree-Law 108/2015 making the 3<sup>rd</sup> amendment to Decree-Law 290/2009 of 12 October creating the Inclusive Employer Certificate, reinforcing the supports to qualification, and adjusting some matters as a result from the implementation of the Programme of Employment and Support to the Qualification of People with a Disability and Incapacity (*Decreto-Lei n.º 108/2015 que procede à 3.ª alteração do Decreto-Lei n.º 290/2009, de 12 de outubro, criando a Marca Entidade Empregadora Inclusiva, reforçando os apoios à qualificação, aos centros de recursos e ao emprego apoiado, e ajustando algumas matérias em função da implementação do Programa de Emprego e Apoio à Qualificação das Pessoas com Deficiência e Incapacidade*), 17 June 2017. Available at: [https://dre.pt/home/-/dre/67507927/details/maximized?p\\_auth=h0XwCKYv](https://dre.pt/home/-/dre/67507927/details/maximized?p_auth=h0XwCKYv).

1.3	<p>Do public procurement procedures ensure that employers convicted of a criminal offence are later-on excluded from participation in a public contract (work, supply or service contract)?</p> <p><b>If yes</b> – for which crimes? Are criminal forms of labour exploitation among the relevant offences?</p> <p><b>If yes</b>, on which legal basis, and briefly explain to what extent (e.g. how often was this done since 2014?). And can such employers also be excluded from acting as a subcontractor in the implementation of a public contract?</p>	<b>X</b>		<p>The abovementioned Article 90-A of the Penal code establishes that, for the crimes covered by Article 11(2) of the same code, the additional penalty of prohibition of signing certain contracts, or the prohibition of signing contracts with certain entities, can be applicable to legal persons or equivalent entities. Among these crimes are those of mistreatment (Article 152-A(1)(b) and (c)), violation of safety rules (Article 152-B), slavery (Article 159) and human trafficking (Article 160), which comprise forms of labour exploitation.</p> <p>In the Public Procurement Code,<sup>27</sup> the Article 55(g) refers that entities cannot participate as candidates, partners or members of any group if they have been the object of application of the additional penalty of suspension of the right to participate in public auctions or contracts, for a period of two years, as established in the Article 562(2)(b) of the Labour Code.<sup>28</sup> However, this provision refers to labour offences and not to crimes. With regard to subcontracting, the Article 317(1)(b) of the Public Procurement Code establishes that it is forbidden to entities to which the prohibition in the Article 55 applies.</p> <p>In addition, the article 55(b) of the Public Procurement Code establishes that entities cannot be candidates or partners in these contracts if they have been condemned by final disposal of proceedings for a crime affecting their professional respectability. These crimes do not include labour exploitation, which in fact does not seem to be necessary considering that the Penal Code (Article 90-A(2)(c) already establishes that one of the additional penalties that can be applied to legal persons for the crimes under the aforementioned Article 11(2) is the prohibition of signing certain contracts or signing contracts with certain entities.</p>
1.4	<p>Are legal provisions or measures in place obliging or enabling Member States'</p>	<b>X</b>		<p>The abovementioned Article 90-A(1) of the Penal Code establishes that, for the crimes under the Article 11(2) of the same code,</p>

<sup>27</sup> Portugal, Decree-Law 18/2008, Public Procurement Code, with several elements up to the Decree-Law 214-G/2015 of 2 October (*Decreto-Lei n.º 18/2008, objeto de várias alterações a última das quais pelo Decreto-Lei n.º 214-G/2015, de 2 de outubro*), 29 January 2008. Updated version available at: [www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=2063&tabela=leis](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2063&tabela=leis).

<sup>28</sup> Portugal, Labour Code (*Código do Trabalho*), 12 February 2009. Updated version available at: <https://dre.pt/web/guest/pesquisa/-/search/108001409/details/normal?q=Lei+n.%C2%BA%2073%2F2017>.

<p>authorities to 1) close an establishment that has been used to commit a criminal offence, <u>and/or</u> 2) to withdraw a licence to conduct a business activity?</p> <p><b>If yes</b> – for which crimes? Are criminal forms of labour exploitation among the relevant offences?</p> <p><b>If yes</b>, how often was this provision used since 2014?</p>		<p>legal entities and equivalent entities can be punished with the main penalties of fine and dissolution, as well as the additional penalties of prohibition of exercising activity and closure of the establishment.</p> <p>Among the crimes under the Article 11(2), which range for instance from sexual coercion to bribery, are several that can constitute criminal forms of labour exploitation or that can occur in a context of work, such as mistreatment (Article 152-A), violation of the safety rules (Article 152-B), slavery (Article 159), human trafficking (Article 160), sexual coercion (Article 163), rape (Article 164), incitement to prostitution (Article 169) or incitement to prostitution of minors (Article 175).</p> <p>According to the Article 90-J of the Penal Code, the prohibition of exercising certain activities can be ordered by the court for a period between three months and five years. When the legal person or equivalent entity commits a crime punished with a penalty of fine for more than 600 days, the court can order the definitive prohibition of certain activities.</p> <p>We have not been able to find any source providing information on how often these provisions have been used.</p>
<b>2 LABOUR EXPLOITATION AND THE INSTITUTIONAL SETTING</b>		
<p>a) Which authority (or authorities) is tasked by law with monitoring the rights of workers – for example through carrying out inspections?</p> <p>b) For each authority mentioned, is a distinction made between monitoring of the rights of:</p> <p>1) nationals and EU nationals, and</p> <p>2) third country nationals?</p> <p><i>I.e. Are any specific or different regimes or rules in place?</i></p>	<b>Supporting information</b>	<p>The authority tasked by law with monitoring the rights of workers in Portugal is the Authority for Working Conditions (<i>Autoridade para as Condições de Trabalho</i>, ACT), regulated by the Regulatory Decree 47/2012 of 31 July.<sup>29</sup> The ACT exercises its competences in companies of all activity sectors, regardless of their form and legal nature and regardless of the regime applicable to their workers, in any place where work is carried out or where sufficient signs of work being carried out exist (Article 2(3)). The ACT aims at the promotion of the improvement of working conditions for all workers by controlling the compliance with the rules on labour and safety and health at work, as well as the promotion of policies to prevent occupational risks, both in the private sector and in the Public Administration (Article 2(1)). In addition to these tasks and the</p>

<sup>29</sup> Portugal, Regulatory Decree 47/2012, Organic Law of the Authority for Working Conditions (*Decreto Regulamentar n.º 47/2012, Lei Orgânica da Autoridade para as Condições de Trabalho*), 31 July 2012. Available at: <https://dre.pt/web/guest/pesquisa/-/search/179298/details/normal?q=Decreto+Regulamentar+n.%C2%BA%2047%2F2012>.

<p><i>Please name all bodies in case multiple bodies are involved – for example, labour inspectorates; specialised police units; trade unions or border guards.</i></p>	<p>application of penalties for labour offences, the ACT is responsible for exercising the legal competences concerning the employment of foreigners; collaborating with other Public Administration bodies to ensure compliance with labour rules in consonance with the EU and ILO legislation; and evaluating the compliance with legislation on posted workers in collaboration with the services that monitor working conditions in other member States of the European Economic Area, especially with respect to requests for information in this field (Article 2(2)(k), (o), (q), (u)). According to the Law 27/2017 of 30 May,<sup>30</sup> which transposed into domestic law the Directive 2014/54/EU, the ACT is also responsible for monitoring the employment and working conditions of EU workers and their family members, namely concerning remuneration, dismissal and health and safety at work.</p> <p>The Immigration and Borders Service (<i>Serviço de Estrangeiros e Fronteiras</i>, SEF) is tasked by law with functions that entwine with those of the ACT concerning the employment of third-country nationals. According to the Article 198-C of the Immigration Law, the SEF is responsible for carrying out regular inspections to control the activity of third-country nationals in an irregular situation.<sup>31</sup> The regulatory law of the SEF, Decree-Law 240/2012 of 6 November, establishes that the SEF is aimed at controlling the movement of people across borders and the permanence and activity of foreigners in national territory, as well as studying, promoting, coordinating and executing measures and actions related with such activities and with migratory movements. Being a criminal police body, the SEF acts under the direction and functional dependence of the competent judiciary authority as established in criminal procedure law (Article 1(1) and (2)). The competences of the SEF include collaborating with the bodies responsible for controlling compliance with the law on the employment of foreigners, that is, the ACT, and coordinating the cooperation between the national security forces and services and those of other countries with regard to the movement of people, the control of foreigners and the investigation of crimes of</p>
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<sup>30</sup> Portugal, Law 27/2017, transposing for the domestic juridical order the Directive 2014/54/EU on measures facilitating the uniform application and the practical exercise of rights conferred by the Article 45 of the Treaty on the Functioning of the European Union and by the Articles 1 to 10 of the EU Regulation 492/2011 (*Lei n.º 27/2017 que transpõe para a ordem jurídica interna a Diretiva 2014/54/UE, que estabelece medidas que facilitam a aplicação uniforme e a execução prática dos direitos conferidos pelo artigo 45 do Tratado sobre o Funcionamento da União Europeia e pelos artigos 1 a 10 do Regulamento (UE) n.º 492/2011*), 30 May 2017. Available at: <https://dre.pt/web/guest/home/-/dre/107094722/details/maximized?serie=l&day=2017-05-30&date=2017-05-01>.

<sup>31</sup> According to a piece by the newspaper *Público*, the SEF carried out 1500 inspections to situations suspected of human trafficking in 2016. These included 238 inspections in agricultural properties. Labour exploitation has been increasingly the reason for human trafficking in Southern Europe and in Portugal. Over the last years, 87% of the victims signalled by the SEF were cases of labour exploitation. In 2016, the Prosecutor-General of the Republic opened 17 criminal enquiries on slave work. [http://rr.sapo.pt/noticia/74614/sef\\_fez\\_1500\\_inspeccoes\\_a\\_trabalho\\_escravo\\_em\\_2016](http://rr.sapo.pt/noticia/74614/sef_fez_1500_inspeccoes_a_trabalho_escravo_em_2016).

	<p>assistance to illegal immigration and related crimes (Article 2(1)(k) and u)).</p> <p>When exercising its competences, the SEF cooperates with all bodies that have responsibilities in criminal prevention and investigation (Article 5(1)) and develops actions of criminal prevention and investigation, especially within the Articles 183 to 188 of the Law 23/2007 of 4 July,<sup>32</sup> which refer to the crimes of assistance to illegal immigration, association with assistance to illegal immigration, recruitment of illegal labour force and use of activity of a foreigner in an irregular situation. The Article 188(1) grants the SEF the power to investigate these crimes and related crimes, namely human trafficking.</p> <p>Without prejudice to the competences of the SEF, the Judiciary Police is also responsible for investigating the crimes of assistance to illegal immigration, association of assistance to illegal immigration and human trafficking (Article 7(4)(b) and (c) of the Law on the Organisation of Criminal Investigation, Law 49/2008 of 27 August<sup>33</sup>).</p> <p>With regard to trade unions, the Article 198-B of the Immigration Law establishes that trade unions and immigrant associations recognised as representative by the High Commission for Migration (<i>Alto Comissariado para as Migrações</i>, ACM), as well as other entities with competences or activities for the integration of immigrants, are entitled to report the employer or the user of activity of a foreign citizen in irregular situation to the ACT, namely in cases of unpaid remuneration; working relations that imply lack of social protection or exploitation concerning wages, working time or particularly abusive working conditions; and illegal use of activity of minors.</p> <p>Concerning EU workers, the abovementioned Law 27/2017 of 30 May establishes that organisations with the aim of defending or promoting the rights and interests of EU workers and their family members with regard to the freedom of movement have the procedural legitimacy to intervene in representation of the person at stake, as long as this is foreseen in their statutes and they are mandated to do so by the person (Article 3).</p>
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<sup>32</sup> Portugal, Law 23/2007 on the legal regime of entry, permanence, exit and removal of foreigners from national territory (*Lei n.º 23/2007 que aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional*), 4 July 2007, with later amendments. Updated version available at: <https://dre.pt/web/guest/pesquisa/-/search/107781373/details/normal?q=Lei+n.%C2%BA%2059%2F2017>.

<sup>33</sup> Portugal, Law 49/2008, Law on the Organisation of Criminal Investigation (*Lei n.º 49/2008, Lei de Organização da Investigação Criminal*), 27 August 2008. Available at: <https://dre.pt/web/guest/pesquisa/-/search/453255/details/normal?q=Lei+n.%C2%BA%2049%2F2008>.

2.2	How and to what extent is such a legal obligation (to monitor the rights of workers) implemented in practice? (E.g. statistics available on number of inspections?).	<p>According to the latest available report on inspective action by the ACT,<sup>34</sup> which covers the year of 2015, this authority carried out 39.306 visits covering a total of 234.643 workers, among whom 2.915 were foreigners (2.808 in a regular situation and 107 in an irregular situation). Among the registered offences, 28 (0.4%) concerned foreigners.</p> <p>With regard to inspective actions concerning immigrants as a vulnerable group, the ACT carried out 532 visits, leading to 316 notifications for taking measures and 171 registered offences. The situations signalled as exploitation and human trafficking for the purposes of labour exploitation have been reported to the competent authorities. A total of 25 inspective actions targeted this issue.</p> <p>According to the report of the Observatory on Trafficking in Human Beings (<i>Observatório do Tráfico de Seres Humanos</i>, OTSH) concerning the year of 2016, the ACT carried out 44 inspective actions for the control and verification of situations of labour exploitation and forced labour related to human trafficking. These actions were mainly conducted in the agricultural sector.<sup>35</sup></p> <p>In turn, the SEF, according to information provided by e-mail about the year of 2015,<sup>36</sup> carried out a total of 1.796 inspections in the sectors of agriculture (296), construction (129) and hospitality and catering (1371). In the year of 2016, this authority carried out a total of 1.884 inspeções in the same sectors (238 in agriculture, 91 in construction and 1.555 in hospitality and catering).</p>
2.3	Name any other authorities in a position to learn (or that typically learn) about the situation of workers and their rights? (E.g. in Austria the financial police are the ones who know most about exploitation, even though they have no legal mandate to deal with the rights of workers).	<p>In addition to the ACT, the Institute of Social Security (<i>Instituto da Segurança Social</i>, ISS) is responsible for controlling compliance with the rights and duties of the beneficiaries, including workers and other social security system contributors (Decree-Law 83/2012 of 30 March,<sup>37</sup> Article 3(2)(u)). It is for the ISS, among other things, to control compliance with the duties on registration and declaration of remuneration, to prepare infraction reports on detected illegal actions, to develop the necessary actions to inform the investigation of illicit behaviours by beneficiaries and contributors, and to promote and organise actions of criminal prevention</p>

<sup>34</sup> Authority for Working Conditions (2015), Atividade de Inspeção do Trabalho. Available at: [www.act.gov.pt/pt-PT/SobreACT/DocumentosOrientadores/RelatorioActividades/Documents/Relatorio%20Atividade%20Inspetiva%202015.pdf](http://www.act.gov.pt/pt-PT/SobreACT/DocumentosOrientadores/RelatorioActividades/Documents/Relatorio%20Atividade%20Inspetiva%202015.pdf).

<sup>35</sup> Observatory on Trafficking in Human Beings (2017), Tráfico de Seres Humanos – Relatório sobre 2016. Available at: [www.apav.pt/apav\\_v3/images/pdf/OTSH\\_Relatorio\\_Anual\\_TSH\\_2016.pdf](http://www.apav.pt/apav_v3/images/pdf/OTSH_Relatorio_Anual_TSH_2016.pdf).

<sup>36</sup> Portugal, SEF, communication by e-mail, 3 July 2017.

<sup>37</sup> Portugal, Decree-Law 83/2012 approving the organic structure of the Institute of Social Security, ISS I.P. (*Decreto-Lei n.º 83/2012, aprova a orgânica do Instituto da Segurança Social, ISS I.P.*), 30 March 2012. Available at: <https://dre.pt/web/guest/pesquisa/-/search/553887/details/normal?q=Decreto-Lei+n.%C2%BA%2083%2F2012>

		<p>(Ordinance 135/2012 of 8 May, Article 8(1) and (2)(b), (c), (e), (k) and (l)<sup>38</sup>).</p> <p>In Portugal, neither the Tax Authority (<i>Autoridade Tributária</i>, AT, Decree-Law 118/2011 of 15 December<sup>39</sup>) nor the Tax Inspectorate (<i>Inspeção Geral de Finanças</i>, IGF, Decree-Law 96/2012 of 23 April<sup>40</sup>) have specific competences on matters of labour exploitation. However, in the framework of freedom of movement for EU workers and their family members, the Law 27/2017 of 30 May provides the AT with competences for monitoring tax benefits (Article 4(1)(e)).</p> <p>On the 16<sup>th</sup> of June 2016, a cooperation protocol was signed between the Ministry of Justice, the Ministry of Interior and the Secretary of State for Tax Affairs aiming to reinforce collaboration between the Republican National Guard (<i>Guarda Nacional Republicana</i>, GNR), the Public Security Police (<i>Polícia de Segurança Pública</i>, PSP), the Judiciary Police (<i>Polícia Judiciária</i>, PJ), the SEF and the AT against the global threats of terrorism, organised crime and human trafficking.<sup>41</sup></p> <p>In the Strategic Plan for Migration (<i>Plano Estratégico para as Migrações</i>, PEM) for the period of 2015-2020,<sup>42</sup> Pillar 1, Measure 20, the AT is referred as one of the partners, together with the ACT, the SEF and the ACM, in the development of activities within a network to combat the exploitation of foreign workers in an irregular situation.</p>
2.4	Are authorities that carry out inspections or learn about the situation of workers (referring here to organisations mentioned under both 2.1 and 2.3) legally obliged to report to the police in cases where there is a substantive suspicion of severe labour exploitation?	The Code of Criminal Procedure, Article 242, establishes that reporting a crime is an obligation, even if its agents are unknown, for: a) the police bodies, as to any crime they come to know of; and b) public employees, as to any crime they come to know of during the exercise of their functions, except if such procedure depends on the victim making a complaint or accusation, which is not the case of labour exploitation. The ACT inspectors are included in the category of public employees and the SEF inspectors in the category of police bodies with specific competence regarding foreigners.

<sup>38</sup> Portugal, Ordinance 135/2012 approving the statutes of the Institute of Social Security, I.P. (*Portaria n.º 135/2012, aprova os Estatutos do Instituto da Segurança Social, I.P.*), 8 May 2012. Available at: <https://dre.pt/web/guest/pesquisa/-/search/553395/details/normal?q=Portaria+n.%C2%BA%20135%2F2012>.

<sup>39</sup> Portugal, Decree-Law 118/2011 approving the organic structure of the Tax Authority (*Decreto-Lei n.º 118/2011, Aprova a Orgânica da Autoridade Tributária e Aduaneira*), 15 December 2011. Available at: <https://dre.pt/web/guest/pesquisa/-/search/145591/details/normal?q=Decreto-Lei+n.%C2%BA%20118%2F2011>.

<sup>40</sup> Portugal, Decree-Law 96/2012 approving the organic structure of the Tax Inspectorate (*Decreto-Lei n.º 96/2012, Aprova a Orgânica da Inspeção-Geral de Finanças*), 23 April 2012. Available at: <https://dre.pt/web/guest/pesquisa/-/search/553002/details/normal?q=Decreto-Lei+n.%C2%BA%2096%2F2012>.

<sup>41</sup> Portugal, Ministry of Justice: [www.portugal.gov.pt/pt/ministerios/mj/noticias/20160606-mj-mai-mf-policias.aspx](http://www.portugal.gov.pt/pt/ministerios/mj/noticias/20160606-mj-mai-mf-policias.aspx).

<sup>42</sup> Portugal, Resolution of the Council of Ministers 12-B/2015 adopting the Strategic Plan for Migration 2015-2020 (*Resolução do Conselho de Ministros n.º 12-B/2015 que adota o Plano Estratégico para as Migrações (2015-2020)*), 20 March 2015. Available at: <https://dre.pt/web/guest/pesquisa/-/search/66807913/details/normal?q=Resolu%C3%A7%C3%A3o+do+Conselho+de+Ministros+n.%C2%BA%2012-B%2F2015+>.

<p><b>If yes</b>, please provide brief information about the obligation.</p>	<p>On the other hand, the Article 244 of the same code adds that any person that knows of a crime can report it to the Public Prosecutor (<i>Ministério Público</i>), to another judicial authority or to the criminal police bodies, but this is not an obligation. The criminal police bodies are the GNR, the PSP and the PJ (Law 49/2008 of 27 August,<sup>43</sup> Articles 2(1), (2) and (3), 3, 10(1) and 11(1)).</p> <p>Neither the ACT nor the ISS are bodies of criminal justice. Therefore, if they suspect of facts integrating forms of labour criminality, they must inform the Public Prosecutor or the competent criminal police bodies about it, according to the Article 242(1) of the Code of Criminal Procedure, which establishes that reporting a crime to the Public Prosecutor is an obligation for police bodies and for public employees if they come to know about it during the exercise of their functions and as a result of such functions, like it happens with labour inspectors. According to information provided by the ACT,<sup>44</sup> “it is within this context that the detected situations of several labour exploitation, and which imply the intentional violation of a number of labour norms by the employer, are communicated to the Public Prosecutor based on the lack of timely payment of remuneration. The violation of the right to the timely payment of remuneration, basic element of the legal labour relation, is associated with the phenomenon in almost all of these situations”. In the years of 2012, 2013, 2014, 2015 and 2016, this authority informed the Public Prosecutor about a total of (respectively) 8, 8, 5, 7 and 2 criminal offences for the lack of payment of remuneration (Article 324 combined with Article 546 of the Labour Code).</p> <p>Being a criminal police body, the SEF is obliged to report to the Public Prosecutor any situation that may indicate the practice of crime of human trafficking (or any other crime) and to develop all of the necessary measures toward the collection and conservation of proofs, victim protection and detention of suspects.</p>
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3	<b>VICTIM SUPPORT</b>
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<sup>43</sup> Portugal, Law 49/2008, Law on the Organisation of Criminal Investigation (*Lei n.º 49/2008, Lei de Organização da Investigação Criminal*), 27 August 2008. Available at: <https://dre.pt/web/guest/pesquisa/-/search/453255/details/normal?q=Lei+n.%C2%BA%2049%2F2008>.

<sup>44</sup> ACT, answering to a request for information by CESIS.

<p>Name the main organisation(s) tasked <sup>45</sup>with providing assistance and support to potential victims of labour exploitation? Provide very brief information about the type of support they provide (e.g. legal advice; psychosocial support etc.)</p> <p><i>These could be, for example, NGOs, trade unions or other representative bodies (e.g. representing workers and their rights).</i></p>	<p>The Law 130/2015 of 4 September, which amended the Code of Criminal Procedure and approved the Standing of Victims,<sup>46</sup> establishes in Article 247(3) that, in case a complaint is made, the Public Prosecutor informs the victim about the schemes and services responsible for instructing the requests for compensation to victims of violent crimes, formulated under the scheme foreseen in the Law 104/2009<sup>47</sup> of 14 September, as well as about the existence of public, private or third sector institutions that develop activities to support victims of crimes. In turn, the Standing of Victims, Article 18(1), establishes that every security force and service maintains its own network of service desks with adequate conditions to receive victims, namely regarding privacy. It adds, in Article 25, that especially vulnerable victims can be provided with temporary accommodation in state-supported hosting structures if this is deemed necessary; other rights are ensured in the following articles (healthcare, communication, etc.).</p> <p>The support and assistance to the victims of labour exploitation can therefore occur through public, mixed or private bodies, such as trade unions or non-governmental organisations.</p> <p>The main public bodies with competences on this matter are:</p> <ul style="list-style-type: none"> <li>- The ACT, which receives complaints concerning the violation of workers' rights; confidentiality rules apply. The ACT provides a complaint form on its website to be filled in by any person.<sup>48</sup></li> <li>- The ACM, which provides a Helpline for Migrants and keeps National Centres to Support Migrants' Integration (<i>Centros Nacionais de Apoio à Integração de Migrantes</i>, CNAIM). These centres provide access to the various services that are relevant in case of difficulties and legal advice, among other things.<sup>49</sup></li> <li>- The Commission for Citizenship and Gender Equality (<i>Comissão para a Cidadania e a Igualdade de Género</i>, CIG), responsible for coordinating the 3<sup>rd</sup> National Plan to Prevent and Combat Trafficking in Human Beings (<i>III Plano Nacional de Prevenção e Combate ao Tráfico de</i></li> </ul>
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<sup>45</sup> Alto Comissariado para as Migrações, Presidência do Conselho de Ministros. Available at: [www.portaldocidadao.pt/web/alto-comissariado-para-as-migracoes/alto-comissariado-para-as-migracoes](http://www.portaldocidadao.pt/web/alto-comissariado-para-as-migracoes/alto-comissariado-para-as-migracoes).

<sup>46</sup> Portugal, Law 130/2015 that amends the Code of Criminal Procedure and approves the Standing of Victims, transposing the Directive 2012/29/EU (*Lei n.º 130/2015 que procede à alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva 2012/29/UE*), 4 September 2015. Available at: <https://dre.pt/web/guest/pesquisa/-/search/70186239/details/normal?q=Lei+n.%C2%BA%20130%2F2015>.

<sup>47</sup> Portugal, Law 104/2009, amended by Law 121/2015, approving the scheme for compensation to the victims of violent crime and domestic violence (*Lei n.º 104/2009, de 14 de setembro, alterada pela Lei 121/2015 que aprova o regime de concessão de indemnização às vítimas de crimes violentos e de violência doméstica*). Updated version available at: [www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=1135&tabela=leis](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1135&tabela=leis).

<sup>48</sup> ACT, Complaints: [www.act.gov.pt/\(pt-PT\)/Itens/QueixasDenuncias/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/Itens/QueixasDenuncias/Paginas/default.aspx).

<sup>49</sup> ACM, Services: [www.acm.gov.pt/-/cnai-centro-nacional-de-apoio-ao-imigrante](http://www.acm.gov.pt/-/cnai-centro-nacional-de-apoio-ao-imigrante).

		<p><i>Seres Humanos</i>), which includes measures targeting victims of labour exploitation in its strategic area 3.<sup>50</sup></p> <p>In the case of EU citizens and their family members, according to the abovementioned Law 27/2017, the ACT, the ISS and other entities mentioned in the Article 4(1), in the field of their own respective competence, must provide EU workers and their family members with the necessary information in view to obtaining legal advice and accessing mechanisms of legal sponsoring to guarantee the effective judicial protection of their rights and interests, under the same terms and conditions than foreseen for national citizens (Article 5).</p> <p>Concerning mixed bodies, it is important to mention the Network of Support and Protection to the Victims of Trafficking in Human Beings (<i>Rede de Apoio e Proteção às Vítimas de Tráfico de Seres Humanos</i>, RAPVT), created by the Protocol of 21 June 2013, which aggregates public and private (NGO) entities.<sup>51</sup> The goals of this initiative include directing the identified victims to the most adequate support services among the partners of the network considering their geographic location and the specific needs for intervention (Clause 3(d)).</p> <p>Concerning private bodies, NGOs and trade unions stand out. One of the most prominent NGO in this respect is the Portuguese Association of Victim Support (<i>Associação Portuguesa de Apoio à Vítima</i>, APAV), which aims at contributing to inform, protect and support citizens that have been victims of criminal offences. The APAV provides personalised services and referrals to other bodies, as well as moral, social, legal, psychological and economic support. Through the Unit of Support to Migrant Victims and Discrimination, the APAV provides specialised support to migrant victims, namely of crimes of labour deception, labour exploitation, lack of payment of remuneration, extortion of documents, racial or ethnic discrimination, and human trafficking.<sup>52</sup> Most of the NGOs that develop activities in the field of support and protection to victims of human trafficking are members of the RAPVT.</p>
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<sup>50</sup> Portugal, Resolution of the Council of Ministries 201/2013 adopting the 3<sup>rd</sup> National Plan to Prevent and Combat the Trafficking in Human Beings (*Resolução do Conselho de Ministros n.º 101/2013 que adota o III Plano Nacional de Prevenção e Combate do Tráfico de Seres Humanos*), 31 December 2013. Available at: <https://dre.pt/web/guest/pesquisa/-/search/483889/details/normal?q=Resolu%C3%A7%C3%A3o+do+Conselho+de+Ministros+n.%C2%BA%20101%2F2013+>.

<sup>51</sup> Protocol for the creation of the Network of Support and Protection to the Victims of Trafficking in Human Beings (*Protocolo de criação da Rede de Apoio e Proteção das Vítimas de Tráfico de Seres Humanos*), 21 June 2013. Available at: [www.otsh.mai.gov.pt/TSHEmPortugal/ModeloDeIntervencao/Documents/RAPVT.pdf](http://www.otsh.mai.gov.pt/TSHEmPortugal/ModeloDeIntervencao/Documents/RAPVT.pdf).

<sup>52</sup> APAV, Frequently asked questions on labour exploitation: [https://apav.pt/apav\\_v3/index.php/pt/35-uauidre/336-exploracao-laboral](https://apav.pt/apav_v3/index.php/pt/35-uauidre/336-exploracao-laboral).

		As established in the abovementioned Article 198-B(2) of the Immigration Law, the trade unions and migrant associations recognised as representative by the ACM, as well as other organisations aiming to defend and promote the rights and interests of immigrants, namely against the use of activity of a foreigner in an irregular situation, use of activity of minors or discrimination in access to employment, to training or to working conditions, have the procedural legitimacy to represent or assist the person at stake, as long as the following conditions are all fulfilled: the defense of those interests are foreseen in the statutes of the organisation and there is an explicit permission by the person at stake.		
<b>4</b>	<b>RISK MANAGEMENT</b>			
		<b>Yes</b>	<b>No</b>	<b>Supporting information</b>
	<p>Are there any official risk management systems in place to guide monitoring operations/inspections with a view to detecting severe labour exploitation? (Art 14. of the Employers' Sanctions Directive (2009/52/EC)<sup>53</sup>.</p> <p><i>(E.g. in Belgium (see pg. 87 of FRA's 2015 report), specialised police units regularly investigate so-called non-risk and new sectors in an attempt to identify possible new risk factors for labour exploitation. They conduct their own research and publish reports showing current trends and advising on problem areas).</i></p>		X	<p>Consulted on the existence of risk management systems to guide their inspective action with a view to detect severe forms of labour exploitation, the authorities contacted (SEF<sup>54</sup> and ACT<sup>55</sup>) have not been clear about the existence of those systems.</p> <p>The SEF mentions that “the Unit Against Trafficking of Persons (<i>Unidade Anti-Tráfico de Pessoas</i>)” is not aware of the existence of such a system for risk assessment/management that guides the operations of control”. This authority adds that, as a criminal police body with specific competence to control the documental situation of all foreign citizens, undertakes inspections on a regular basis, which many times are carried out at the workplace of such citizens (agricultural properties, restaurantes, etc.).</p> <p>In turn, the ACT mentions that it “develops its activity based, on one hand, proactively on the annual activity plan of inspective activities with specific programmes destined to safeguard and control the pillars of decent work, verify the minimum standards for working conditions and protect the most vulnerable groups of workers (for example women, minors, immigrants,</p>

<sup>53</sup> [Directive 2009/52/EC of the European Parliament and the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#) OJ L 168/24, 30 June 2009.

<sup>54</sup> Answer of the SEF by e-mail, 3 July 2017.

<sup>55</sup> Answer of the ACT by e-mail, 21 June 2017.

			<p>workers with a disability”. “On the other hand, the inspective action of the ACT is developed in response to complaints that come to its knowledge or to phenomena known through the inter-institutional cooperation with the social partners and the civil society – immigrant associations with recognised representativeness –, and even through the media.” “All authorities are aware of the seasonal character of some of these phenomena, which are associated to specific seasons, be it in the sector of agriculture and silviculture or in the sector of tourism”. “In both contexts, the intervention by the ACT is frequently organised in a scenario of cooperation with all of the relevant actors in order to ensure a more efficient intervention.”</p> <p>In addition, the Strategic Plan for Migration 2015-2020,<sup>56</sup> although it does not include measures specifically meant to guide the monitoring action, contains some relevant measures to combat labour exploitation in Part II – Pillar of Immigrant Integration Policies:</p> <p>Measure 20 – Preventing and combatting exploitation in the use and recruitment of foreigners in an irregular situation to work, including two actions: the creation of a network of national and regional partners to combat the exploitation of immigrant illegal workforce (the interveners are the SEF, the AT, the ACT, the ISS and the ACM); and the intensification of the combat to the use of illegal workforce by reinforcing the inspective action to employers (ACT and SEF);</p> <p>Measure 21 – Promoting the information on rights and duties of foreign workers through the organisation of awareness/information actions in the fields of labour relations, safety and health at work, equality and no gender discrimination (ACM, ACT, CITE, CIG, municipalities, other);</p> <p>Measure 23 – Promoting the improvement of working conditions by carrying out inspective actions at the workplaces, namely with the aim of combatting the illegal use of migrant workforce, gender and racial discrimination, and the trafficking in human beings (ACT and CIG).</p>
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<sup>56</sup> Strategic Plan for Migration 2015-2020 (*Plano Estratégico para as Migrações*). Available at: <http://pofc.gren.pt/ResourcesUser/2015/Noticias/PlanoEstrategicoMigracoes.pdf>.

	<p><b>If yes</b>, please describe any such systems in place, and include the following information:</p> <ul style="list-style-type: none"> <li>- List the bodies (for example, of those described in section 2) responsible and describe their various roles</li> <li>- Describe which sectors of the economy such risk assessments apply to</li> <li>- How often is such an assessment carried out?</li> </ul>			
<b>5</b>	<b>COURT CASES</b>			
		<b>Yes</b>	<b>No</b>	<b>Supporting information</b>
	<p>Since 2014, is there any case law clarifying the criminal law provisions on severe labour exploitation? (<i>I.e. court decisions which clarify basic concepts or categories constituting severe labour exploitation</i>)?</p> <p><b>If yes</b>, please provide:</p> <ul style="list-style-type: none"> <li>- Decision date</li> <li>- Reference details (name court, case number, link to decision)</li> <li>- Key facts of the case</li> <li>- Main reasoning/argumentation</li> <li>- Key issues (concepts, interpretations) clarified by the case</li> <li>- Results / key consequences or implications of the case</li> <li>- Key quotation in original language and translated into English with reference details</li> </ul>	<b>X</b>		<ul style="list-style-type: none"> <li>- 11 June 2014</li> <li>- Supreme Court of Justice (<i>Supremo Tribunal de Justiça</i>, STJ), Process 161/05.2JAGR.D.C2.S1, <a href="http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/f9106575f5b84c6880257db0005c01fb?OpenDocument">www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/f9106575f5b84c6880257db0005c01fb?OpenDocument</a></li> <li>- Four Portuguese nationals decided to recruit persons in Portugal struggling with unemployment, poverty, alcoholism and cognitive disabilities, from broken families, to work in Spain, in agriculture, with a monthly remuneration of 250 Euros and meals, accommodation and tobacco. The defendants, as soon as they were able to recruit the workers, in some cases resorting to violence, drove them to Spain, took their documents and accommodated them at a warehouse, also used as a hen house, without any hygiene or health conditions. The workers slept on the floor, some of them chained to prevent them from leaving, with the door of the warehouse locked. The victims were forced to carry out agricultural tasks against their will for 12, 14 or 16 daily hours, if not 18 or 20. The working conditions were negotiated between the defendants and several local employers, to whose properties they took the victims on a daily basis. The remuneration for the work was paid to the defendants, who kept it for themselves. Whenever the victims complained, they were beaten and threatened with death. Still, some of them managed to flee</li> </ul>

			<p>and one of them went to a station of the <i>Guardia Civil</i>, where she was provided with clothes and food and then sent by train to Portugal. Her medical exams detected several corporal and psychic damages, and she was admitted to a psychiatric unit.</p> <p>The defendants appealed of the decision taken by the Court of Appeal of Coimbra to the STJ. Among other things, they questioned the competence of the Portuguese court with respect to the qualification of the crimes, considering these had been committed in Spain, country of which they were officially residents at that time. The STJ, answering this question, refers among other arguments that, based on proven facts, several acts practiced by the defendants in Portugal fulfil the elements that constitute the crimes of labour-related deception, slavery and, currently, trafficking of persons for the purposes of labour exploitation.<sup>57</sup> It adds that, in this particular case, not only the Spanish state did not ask for the extradition of the defendants but also it did not initiate the due criminal procedure, instead collaborating with the Portuguese authorities on locating, hearing and other procedural actions, in consonance with the legislation on international judicial cooperation and mutual judicial assistance.</p> <p>The defendants also disputed the qualification of the crime as slavery. The STJ accompanied the decision of the Court of Appeal on this matter, mentioning that it was proven that the victims, besides being used by the defendants for economic exploitation, were poorly fed, did not enjoy freedom of movement – they could not take the initiative of going to the town or any other place and were prevented from communicating with relatives or friends, or watched by the defendants whenever this was permitted –, were beaten, threatened and in some cases chained. They were fully dependent for economic and food purposes and they were treated by the defendants without any respect for their human dignity, as objects lacking any will, to be used as they pleased. In addition to these facts, it was proven that the defendants acted in a free, voluntary and conscious manner, with joint efforts and common purposes. According to</p>
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<sup>57</sup> The crime of trafficking of persons for labour exploitation has been introduced in the Article 160 of the Penal Code by the Law 59/2007 of 4 September (according to the Framework Decision 2002/629/JAI), later than the occurrence of the facts object of the judicial decision under appeal.

			<p>the STJ, the key element was not the pecuniary harm caused by the defendants to the victims, but having treated them as a “thing” that belonged to them, denying them their dignity as persons.</p> <p>On these grounds, the STJ decided that the defendants did fulfil, in co-authorship, through their behaviours and concerning the twelve offended persons, all of the objective and subjective elements of the crime of slavery, punished under the Article 159 a) of the Penal Code, in agreement with the earlier decision by the Court of Appeal. It absolved the defendants from the crimes of labour-related deception considering that the crimes of slavery encase the former, contrary to the defendants’ request to be condemned for labour-related deception, in equivalence to the crime of mistreatment, serious coercion and abduction. This claim was not upheld by the court.</p> <p>“It is an essential and sufficient element to characterise a behaviour as slavery that the person is treated as a thing of which the agent disposes as if it was his or her property. It is not sufficient that a person is used as a means to a particular end, such as economic exploitation, for slavery to exist. It is necessary that the victim is reduced to the category of an object, of a thing, over which the agent exercises a factual power of disposition.”</p>
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<b>6</b>	<b>PROMISING PRACTICES</b>			
		<b>Yes</b>	<b>No</b>	<b>Supporting information</b>

	<p>Are there any promising practices in relation to any practical measures to tackle severe labour exploitation or support foreign victims?</p> <p><b>If yes</b>, please provide:</p> <ul style="list-style-type: none"> <li>- Title of practice</li> <li>- Organisation implementing it</li> <li>- Funding body</li> <li>- Brief description, including start (and if relevant, finish) dates</li> </ul>	<p>X</p>	<p>Along the conduction of this fieldwork research, focusing on the experiences and perspectives of migrant workers on severe labour exploitation in Portugal, one existing practical measure emerged as a promising practice to tackle severe labour exploitation and support foreign victims, in particular those who are victims of trafficking in human beings.</p> <p>This regards the so-called EME (Multi-disciplinary Specialised Teams, <i>Equipas Multidisciplinares Especializadas</i>). The first EME were created in 2012. The five currently existing regional EME cover Mainland Portugal and provide technical support, reception, support, monitoring and referral to signalled victims of trafficking in human beings. These regional teams are implemented and operate under the coordination and supervision of a Portuguese NGO, the Family Planning Association (<i>Associação para o Planeamento da Família</i>, APF). They bring together, at regional-level networks, governmental and non-governmental bodies working directly or indirectly with potential victims of trafficking in human beings, including the police.</p> <p>The funding is secured by the Secretary of State for Citizenship and Equality.</p> <p>The EME, and the regional networks, articulate with national-level mechanisms and services, namely the Network for Support and Protection of Victims of Trafficking in Human Beings (<i>Rede de Apoio e Proteção às Vítimas de Tráfico</i>, RAPVT). This national-level Network for cooperation and information sharing, and aiming at the prevention, protection and reintegration of victims of trafficking in human beings, is in operation since June 2013. It was created via a protocol signed between the Commission for Citizenship and Gender Equality (<i>Comissão para a Cidadania e a Igualdade de Género</i>, CIG), as coordinator of the National Action Plan Against Trafficking in Human Beings, and 22 public and civil society organisations.</p>
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