

# **Social Fieldwork Research (FRANET)**

## **Severe forms of Labour Exploitation**

### **Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States**

#### **Austria, 2014**

FRANET contractor: European Training and Research Centre for  
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Author: Social Fieldwork Expert Isabella Meier

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# Contents

Categories of interviewees .....	4
1. Introduction, including short description of fieldwork .....	5
2. Legal framework .....	8
3. Labour exploitation and the institutional setting .....	11
3.1 Tasks of institutions involved in preventing labour exploitation and in enabling victims to access justice .....	11
3.1.1 Monitoring .....	11
3.1.2 The Austrian Task Force on Combating Human Trafficking .....	18
3.1.3 Workers representative organisations .....	18
3.1.4 Migrant centres .....	21
3.2 Forms and frequency of incidents of labour exploitation encountered by experts in their work; economic areas affected .....	22
Table 1: Forms of labour exploitation encountered by experts/professional group .....	22
Table 2: Most frequent forms of conducts contributing to labour exploitation.....	23
Table 3: Occupations of victims of labour exploitation .....	24
4. Risks and risk management .....	26
4.1 Identification of common risk factors for labour exploitation .....	26
Table 4: Most important risk factors for labour exploitation in relation to the legal and institutional setting .....	27
Table 5: Most important risk factors in relation to the personal characteristics and the initial situation of the migrant worker .....	28
Table 6: Most important risk factors in relation to the situation of migrant workers at their workplace.....	29
4.2 Prevention measures aimed at reducing the risks of labour exploitation and the obligations of specific organisations in this area .....	32
4.3 Protection against (repeat) victimisation: actions undertaken by the police to protect victims against the risk of repeated victimisation, including how the police conduct investigations.....	35
4.3.1 Actions taken by the police .....	36
4.3.2 Investigation and prosecution .....	39
5. Victim support and access to justice .....	42
5.1 Victim support, including available support services.....	42
5.2 Access to justice and other mechanisms to empower victims .....	43
5.2.1 Civil claims in criminal proceedings and claims lodged by third parties .....	44
5.2.2 Mechanisms that would facilitate lodging of complaints .....	45
6. Attitudes.....	48
6.1 Reasons for not coming forward .....	49

Table 7: Most relevant factors that significantly account for the fact that not many migrant workers who have been exploited severely come forward seek support or report to the police .....	51
6.2 Most important factors to migrant workers who are victims .....	52
Table 8: Three most important factors to migrant workers who are victims .....	52
6.3 Effectiveness of measures in Austria and suggestions to improve .....	53
6.3.1 Increasing the effectiveness of inspections .....	53
6.3.2 Third country nationals' access to the labour market and to justice.....	54
6.3.3 Awareness raising .....	54
6.3.4 Legislation .....	55
6.3.5 Selection of given measures .....	56
Table 9: Measures, which would mostly improve the way labour exploitation is addressed in Austria .....	56
7. Conclusion and any other observations, including contentious issues from interviews/ focus groups .....	60

## Categories of interviewees

Nine categories of experts working in the context of labour exploitation took part in the interviews and focus groups:

M – Monitoring bodies (such as labour inspectorates, health and safety bodies)

P – Police and law enforcement bodies

S – Victim support organisations

J – Judges and prosecutors

L – Lawyers

R – Recruitment and employment agencies

W – Workers' organisations, trade unions

E – Employers' organisations

N – National policy experts at Member State level.

FG – Focus Group

Throughout this report, references to these groups as 'M', 'P' etc. are to be understood as referring to the above-named 9 categories.

Where [M(X)] appears, this denotes the group from which the referenced interviewee came, in addition to the number of interviewees from that group referenced (for example, if a statement is supported by references to three interviewees from the M group, two from the S group and one from the J group, the reference will read '[M(3); S(2); J(1)]'. Likewise, if a statement is supported by statements from interviewees who participated in focus groups (in the following example, a lawyer), the reference will read '[FG(L)]'.

For data protection reasons, no names of interviewees have been mentioned.

# 1. Introduction, including short description of fieldwork

The fieldwork consisted of 30 individual interviews, one focus group and 10 case studies. All interviews were carried out face-to-face and almost all took place at the interviewees' workplaces. The following remarks provide information on the data gathered through the fieldwork, separately for each method (interviews, focus group and case studies).

The **individual interviews** were carried out in the four Austrian provinces of Burgenland, Styria, Upper Austria and Vienna, predominantly in two geographic regions: the South-East of Austria and Vienna. Thus, the regional focus of the fieldwork lies in Eastern Austria, since Vienna is also located there. There are two reasons for this: Firstly, many migrants from Eastern EU countries (particularly Hungary, Czech Republic, Slovakia and Romania) work in Eastern Austria, either temporarily within the framework of oscillating migration or for the long term. Secondly, the majority of institutions involved in preventing and combating labour exploitation are located in Vienna.

The interviewees' willingness to participate in the research was higher than expected. However, there were some set-backs: mainly interviewees recommended within the professional groups victim support services (S), police (P), employers' organisations (E) and recruiting agencies (R) refused to participate. Members of the professional groups S and P justified this with work overload and members of the professional groups E and R simply did not respond to our repeated attempts to establish contact (via e-mail and telephone). However, we were able to replace all refusals by alternative interviewees. Therefore, the achieved sample closely matches the initial design. The following remarks present the personal characteristics of the participants in the individual interviews:

- Professional group R: proposed and conducted 3
- Professional group S: proposed and conducted 7
- Professional group W: proposed and conducted 2
- Professional group N: proposed and conducted 1
- Professional group M: initially proposed 4, conducted 5 after consultation with the FRA
- Professional group J: proposed and conducted 3
- Professional group L: proposed and conducted 3
- Professional group P: proposed and conducted 5
- Professional group E: initially proposed 2, conducted 1

Four out of 30 interviewees were in age group 1 (under 30), 19 in age group 2 (between 30 and 50) and 12 were in age group 3 (over 50).

The duration of many interviews exceeded the time frame initially expected. The shortest interview took 24 minutes and the longest 107 minutes, the average duration was 67 minutes. While short interviews were mainly due to interviewees' lack of experience on severe forms of labour exploitation, extended interviews were not necessarily attributable to a high level of experience. In some cases the reason was the presence of more than one interviewee and in some it was simply the fact that the respective interviewees had a lot to tell.

Regarding the number of years of experience on labour exploitation, some interviewees differed between the years of experience in their occupational position and the years of actual experience on labour exploitation. Taking into account only the experience on labour exploitation, the interviewees' experience in years varies from 0 (four interviewees) to 36 (two interviewees), the average number of years of experience on labour exploitation is 11.

Although the interviews worked quite well, some difficulties resulted from applying the interview guidelines. It was difficult for some interviewees to select three or five most frequently occurring/most important categories, since often, more or even all categories were perceived as being equally relevant/frequently occurring. Interviewees (professional groups) who mainly dealt with labour exploitation within the civil justice system found it difficult to cope with the questionnaire's criminal law oriented terminology. A similar problem occurred in connection with the term "victim support services": Those who deal with criminal law and/or criminal forms of labour exploitation, perceived victim support services to be only available for victims of violence and/or human trafficking. Those who did not deal with criminal forms of labour exploitation, shared the understanding of the project.

The **focus group** was carried out with five participants, who were members of the following professional groups: monitoring body (M), police (P), employees' organisation (W), lawyer (L) and victim support service (S). Three participants were female and two male. The focus group was organised at a stage of the fieldwork when almost all interviews had already been conducted, in order to confront the participants with the findings of a first analysis of the interviews carried out so far (see section 7). The focus group took two hours and the atmosphere was comfortable and respectful, since some participants were acquainted with each other due to joint work on combating/preventing labour exploitation.

Information on the **case studies** was provided by interviewees from the following professional groups: a lawyer, judges, members of workers organisations, the police, members of victim support services and a labour inspector. No information on concrete cases was provided by recruiting agencies and employers' organisations: interviewees of both professional groups stated a lack of experience with cases of labour exploitation.

Four out of 10 cases of labour exploitation took place in the economic sector of agriculture and encompassed seasonal/temporary work in harvesting. Two further cases took place in domestic servitude (one in a diplomatic household and the other one in a non-diplomatic household) and two further cases happened in gastronomy. One case took place in the economic sector of metal industry and the remaining one in the area of sex work.

Regarding the victims' access to justice and the outcome of the procedures, one has to identify a strong focus on civil procedures at the labour courts (victims claim for back-pay of denied wages and social security contributions and public authorities claim for punishing tax fraud). In seven out of ten cases, the victim's civil claims were filed by employees' representative organisations, namely the trade union (*Gewerkschaftsbund*) and the Chamber of Labour (*Arbeiterkammer*) on behalf of them. In two out of 10 cases, the victims chose not to go to court: in one case the victim gave priority to achieving a residence permit in Austria rather than prosecuting the perpetrators. In the other the victim feared the consequences of a legal procedure.

In four out of 10 cases the public prosecutor's office was involved. One of these cases ended in acquittal for lack of evidence, since the domestic worker had always received her salaries in cash, which caused barriers in proving that she had not received enough money. Another case ended with a very mild punishment of the perpetrator, since the victim (due to fear of the perpetrator) withdrew her initial readiness to give evidence as a witness in the criminal procedure. Another case was currently pending at the prosecution and the remaining one ended up at court and the perpetrators were prosecuted.

The case studies clearly indicated a neglect of criminal aspects of cases of labour exploitation. The cases are mainly dealt with within civil and labour law and are about claiming back-pay of denied wages and social security contributions. Therefore, criminal aspects of labour exploitation (particularly pressure, compulsion, creating dependency, very bad housing conditions) often remain beneath the surface. The focus of employees' representative services

is on labour law and claiming for back-pay of denied wages and social security contributions, not on criminal law.

The fieldwork was carried out from 10 October 2013 (first interview) to 14 April 2014 (last interview).

## 2. Legal framework

There are a number of provisions in the Austrian Criminal Code (*Strafgesetzbuch, StGB*)<sup>1</sup>, the Act on the Employment of Children and Juveniles (*Kinder- und Jugendlichen-Beschäftigungsgesetz, KJBG*)<sup>2</sup>, the Constitutional Law on the Rights of Children (*Bundesverfassungsgesetz über die Rechte von Kindern*)<sup>3</sup>, the Employment of Aliens Act (*Ausländerbeschäftigungsgesetz, AuslBG*)<sup>4</sup> and the Alien's Police Act (*Fremdenpolizeigesetz*)<sup>5</sup> that constitute the legal framework regarding labour exploitation in Austria. An overview of the relevant provisions is given below.

§104 of the Austrian Criminal Code (*Strafgesetzbuch, StGB*) punishes the deprivation of liberty of a person through slavery and slavery-like practices. The penalty foreseen is between ten and twenty years of imprisonment. Practices which do not fulfill all criteria of slavery and acts similar to slavery are often covered by the offence of trafficking in human beings, §104a of the Austrian Criminal Code.<sup>6</sup> §104a of the Austrian Criminal Code has recently been amended in course of the amendments of the sexual crime legislation (*Sexualstrafrechtsänderungsgesetz 2013*).<sup>7</sup> Acts covered by §104a are recruitment, housing or other accommodation, transport, and offering of the person or passing of a person on to someone else. The penalty foreseen is from six months up to five years of imprisonment. Aggravating circumstances include committing the crime within the activities of an organised criminal group, causing particularly serious harm to the victim, or the use of severe force, will lead to sanctions of between one to ten years of imprisonment.

The forms of exploitation provided for in §104a (3) Criminal Code include sexual exploitation, the removal of organs and labour exploitation. §104a (3) Criminal Code also covers begging as a possible form of labour exploitation. Committing the offense against a person of minor age (below 14 years of age) is now regulated separately in §104a (5) of the Austrian Criminal Code. The penalty foreseen for committing the offense against a person of minor age has been increased from one to ten years of imprisonment. §217 Criminal Code punishes 'transnational prostitution trade' (*Grenzüberschreitenden Prostitutionshandel*). A penalty of six months to five years is foreseen. Aggravating circumstances (i.e. commitment in professional capacity, with violence, deceit, or exploitation of a misapprehension) lead to a penalty of

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<sup>1</sup> Austria, Criminal Code (Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen, Strafgesetzbuch - StGB), BGBl. Nr. 60/1974 last amended by BGBl. I No. 134/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296).

<sup>2</sup> Austria, Act on the Employment of Children and Juveniles (Bundesgesetz über die Beschäftigung von Kindern und Jugendlichen 1987 (Kinder- und Jugendlichen-Beschäftigungsgesetz 1987 – KJBG) BGBl. No. 599/1987 last amended by BGBl. I No. 138/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008632](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008632).

<sup>3</sup> Austria, Constitutional Law on the Rights of Children (Bundesverfassungsgesetz über die Rechte von Kindern) BGBl. I No. 4/2011, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007136](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007136).

<sup>4</sup> Austria, Employment of Aliens Act (Bundesgesetz vom 20. März 1975, mit dem die Beschäftigung von Ausländern geregelt wird, Ausländerbeschäftigungsgesetz - AuslBG), BGBl. No. 218/1975 last amended by BGBl. I No. 72/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008365](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008365)

<sup>5</sup> Austria, Alien's Police Act (Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreiseteil, Fremdenpolizeigesetz 2005 - FPG), BGBl. I No. 100/2005 last amended by BGBl. I No. 144/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241).

<sup>6</sup> Austria, Criminal Code (Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen, Strafgesetzbuch - StGB), BGBl. Nr. 60/1974 last amended by BGBl. I No. 134/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296).

<sup>7</sup> Austria, Act amending the Criminal Code and the Criminal Procedure Code 1975 to improve the protection of the sexual integrity and self-determination (Bundesgesetz, mit dem das Strafgesetzbuch und die Strafprozessordnung 1975 zur Verbesserung des strafrechtlichen Schutzes der sexuellen Integrität und Selbstbestimmung geändert werden (Sexualstrafrechtsänderungsgesetz 2013), BGBl. I Nr. 116/2013, 11 July 2013.



between one to ten years of imprisonment. Although §217 Criminal Code covers 'transnational prostitution trade' the provision can be applied for cases of trafficking in human beings in case trafficking is done for the purpose of sexual exploitation only. A border needs to be crossed so that §217 Criminal Code is applicable.<sup>8</sup> If the additional special intent to exploit required for this provision can be proven, the application of §217 prevails over §104a due to its higher penalty.<sup>9</sup>

§93 of the Austrian Criminal Code protects juveniles below the age of 18 years under care or custody of guardians or employers from excessive strain. A penalty of up to two years of imprisonment is foreseen in case the excessive strain is done in a malicious or reckless manner and causes the danger of death, serious personal injury or damage to health. §5 of the Act on the Employment of Children and Juveniles (*Kinder- und Jugendlichen-Beschäftigungsgesetz, KJBG*) stipulates that children shall not be used for any other types of labour than described in the Act on the Employment of Children and Juveniles. According to §30 of the Act on the Employment of Children and Juveniles any violation of this provision is punishable by the district administrative authority (*Bezirksverwaltungsbehörde*) with a fine of between 72 to 1,090 Euro, and in case of recurrence between 218 to 2,180 Euro. Moreover, Article 3 of the Constitutional Law on the Rights of Children (*Bundesverfassungsgesetz über die Rechte von Kindern*)<sup>10</sup> prohibits child labour in general and stipulates that apart from legally defined exceptions, the minimum age for children to engage in the working life shall not be below the age at which compulsory school attendance ends.

§216 of the Austrian Criminal Code punishes, amongst other things, the exploitation of a person for prostitution. The penalty foreseen is up to one year of imprisonment. In case this is done with the intent to establish continuous revenues, the penalty foreseen is up to two years of imprisonment.

§116 Alien's Police Act (*Fremdenpolizeigesetz, FPG*) punishes the 'exploitation of a foreign person'. 'The perpetrator takes advantage of the victim's specific dependency which is based on the fact that the foreign person either is in the country illegally, does not have a regular working permit or is in any other particular situation of dependency.'<sup>11</sup> Depending on the existence of aggravating circumstances, penalties foreseen are between six months up to three or from one up to ten years of imprisonment.

Austria is bound by the Employers' Sanction Directive. Art. 9(1)c of the Employers' Sanction Directive regarding particularly exploitative conditions was implemented in Austria through the adoption of §28c (2) 1 Employment of Aliens Act (*Ausländerbeschäftigungsgesetz, AuslBG*). The penalty foreseen is up to two years imprisonment. Art. 9(1)d of the Employers' Sanction Directive regarding the exploitation of a victim of trafficking was implemented through the adoption of §28c (2) 2 Employment of Aliens Act. The penalty foreseen is up to two years imprisonment. Article 9(1)e of the Employers' Sanction Directive regarding the illegal employment of minors was implemented through the adoption of §28c (1) Employment of Aliens Act. The penalty foreseen is up to six months or 360 daily fines in lieu of jail time.

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<sup>8</sup> Ibid., p. 4.

<sup>9</sup> Ibid.

<sup>10</sup> Austria, Constitutional Law on the Rights of Children (Bundesverfassungsgesetz über die Rechte von Kindern) BGBl. I No. 4/2011, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007136](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007136).

<sup>11</sup> Planitzer, J. and Sax, H. (2010) 'The legal framework on defining Trafficking in Human Beings for labour exploitation and the dimensions of this crime', in: Rijken, C. (ed.), *Combating Trafficking in Human Beings for Labour Exploitation*, Wolf Legal Publishers, p. 13, available at: [http://bim.lbg.ac.at/files/sites/bim/THB%20for%20Labour%20Exploitation\\_Chapter%201\\_Austria\\_JPlanitzer\\_HSax\\_2.pdf](http://bim.lbg.ac.at/files/sites/bim/THB%20for%20Labour%20Exploitation_Chapter%201_Austria_JPlanitzer_HSax_2.pdf).

As can be seen from these provisions, the legal framework is complex and there is no single law in Austria dealing specifically and exclusively with labour exploitation. This leads to sometimes intricate questions on the relation between these provisions. For instance, the relation between § 104a StGB and § 116 FPG has long been assessed differently by legal scholars. Due to the increase of the penalty foreseen for 104a (1) StGB by way of the Act amending the Criminal Code and the Criminal Procedure Code 1975 to improve the protection of the sexual integrity and self-determination,<sup>12</sup> it is to be expected that this provision will not be subordinated to § 116 FPG anymore.<sup>13</sup> Moreover, both, § 28c (2) 1 Employment of Aliens Act and § 116 Alien's Police Act constitute criminal offenses foreseeing penalties for the "exploitation of a foreign/alien person". It has to be considered in this context that the Employment of Aliens Act generally regulates the employment of aliens in Austria and that §28c of this Act was adopted to implement Article 9 of the Employers' Sanction Directive (2009/52/EC) of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. Thus, §28c ensures that infringements of the prohibition of illegal employment constitutes a criminal offence. Consequently, this criminal provision is not applicable to persons for which the Employment of Aliens Act does not apply. This, for instance, includes persons enjoying the freedom of movement for workers, spouses of Austrian nationals entitled to residence in Austria according to the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz, NAG*) or persons that have been granted asylum (for full list see §1 (2) Employment of Aliens Act). Furthermore, §28c (4) clarifies that the criminal penalties foreseen in § 28c (1) and (2) shall not be applied, in case the offense is subject under a different legal specification to the threat of a penalty of the same or greater severity.

§ 116 Aliens Police Act generally punishes the exploitation of alien persons. "Alien" in the sense of the Alien's Police Act is everyone not having Austrian citizenship (see §2 (1) Alien's Police Act). It is a particular requirement for this offense that the perpetrator takes advantage of the victim's specific dependency (illegal stay in Austria, lack of a working permit, or other particular situation of dependency). This offence further requires the offender's intention to obtain a regular income by repeatedly committing the offense and a reckless exploitation of the victim. "Reckless" in this context means, for instance, that the offender pays no or a completely inadequate remuneration for a longer period of time, that the offender demands work from the victim while heavily exceeding the legally allowed hours of work, or that the offender demands the work under unacceptable working conditions.<sup>14</sup>

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<sup>12</sup> Austria, Act amending the Criminal Code and the Criminal Procedure Code 1975 to improve the protection of the sexual integrity and self-determination (Bundesgesetz, mit dem das Strafgesetzbuch und die Strafprozessordnung 1975 zur Verbesserung des strafrechtlichen Schutzes der sexuellen Integrität und Selbstbestimmung geändert werden (Sexualstrafrechtsänderungsgesetz 2013), BGBl. I Nr. 116/2013, 11 July 2013.

<sup>13</sup> See Austria, Explanatory Remarks on the Act amending the Criminal Code and the Criminal Procedure Code 1975 to improve the protection of the sexual integrity and self-determination (Sexualstrafrechtsänderungsgesetz 2013), available at: [www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME\\_00462/imfname\\_285372.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00462/imfname_285372.pdf).

<sup>14</sup> See Ornezeder/Schmalzl/Schrefler-König/Szymanski, FPG § 116, online edition, available at: [www.rdb.at](http://www.rdb.at).

## 3. Labour exploitation and the institutional setting

### 3.1 Tasks of institutions involved in preventing labour exploitation and in enabling victims to access justice

#### 3.1.1 Monitoring

First of all, one has to mention that there is no public authority in Austria which has a legal mandate to monitor labour exploitation and to enable victims to access justice. Only the criminal police monitors in the field of prostitution. There are several authorities with access to the premises of companies. They carry out monitoring tasks in different areas (e.g. tax fraud, hygiene conditions or occupational safety). If these authorities encounter labour exploitation, they have the obligation to file a notice, but monitoring labour exploitation is not their mandate. Therefore, monitoring working conditions to identify cases of labour exploitation happens only indirectly, while the main responsibility of the respective bodies is located in a different area. From all these authorities the following were selected for interviews, because their mandate comes closest to labour exploitation and their monitoring tasks in companies are carried out regularly and rather frequently. These authorities are:

- The labour inspectorate monitors work places in order to prevent or investigate occupational injuries. Its mandate encompasses also monitoring working times.
- The financial police monitor work contracts, social security and wage tax payments in order to prevent and punish tax fraud.

The **central labour inspectorate** is located at the Federal Ministry of Labour, Social Affairs and Consumer Protection (*Bundesministerium für Arbeit, Soziales und KonsumentInnenenschutz*). Its main responsibility is monitoring work places to prevent occupational injuries. These tasks are in the responsibility area of the Federal State (*Bund*).

The central labour inspectorate's mandate encompasses two aspects, which are relevant in connection to labour exploitation. The first aspect is the labour inspectorates' monitoring of health and safety conditions of workplaces to prevent occupational injuries (divided according to different economic sectors). The other aspect of the central labour inspectorate's mandate is developing legal provisions, such as the Law to Combat Wage and Social Dumping (*Lohn- und Sozialdumpinggesetz, LSDB-G*)<sup>15</sup>, and negotiating their implementation with the social partners, e.g. the Chamber of Labour (*Arbeiterkammer*) and the Chamber of Commerce (*Wirtschaftskammer*). In connection with this, the central labour inspectorate has implemented the Working Group Labour Exploitation; members are actors working in the field of labour exploitation (members of NGOs, social partners and public authorities, like the labour inspectorate). The main mandate of this working group is to prevent labour exploitation through the development and implementation of legal provisions and laws in the field of labour law (see also section 3.1.2).

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<sup>15</sup> Austria, Law to Combat Wage and Social Dumping (*Bundesgesetz, mit dem das Arbeitsvertragsrechts-Anpassungsgesetz, das Insolvenz-Entgeltsicherungsgesetz, das Landarbeitsgesetz 1984, das Arbeitskräfteüberlassungsgesetz und das Allgemeine Sozialversicherungsgesetz geändert werden, Lohn- und Sozialdumping-Bekämpfungsgesetz – LSDB-G*), BGBl. I Nr. 24/2011, available at: [www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2011\\_I\\_24/BGBLA\\_2011\\_I\\_24.pdf](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_I_24/BGBLA_2011_I_24.pdf).

The tasks and responsibilities of the labour inspectors are legally based on the Austrian Work Inspection Act (*Arbeitsinspektionsgesetz*)<sup>16</sup>, which mainly protects the health and safety of employees at their work places. The labour inspectorate is also responsible for monitoring and preventing overtime but it is not responsible for underpayments or denied wages; here the financial police are in charge.

Inspections are carried out in the following way: basically the labour inspectorates use lists of employers or agencies. Agencies from this list are selected either randomly or according to certain criteria: Companies in economic sectors with a higher probability of hazardous situations for employees (e.g. construction) are monitored more often than others (e.g. office work). Apart from that, every suspicion reported to the labour inspectorate is pursued through inspections. Furthermore, the labour inspectorate has specific control campaigns (*Schwerpunkte*) for specific sectors. Inspections are only predictable if a certain person or certain documents are needed at the monitoring visits, otherwise they are not. So far, no possibility for inspections in private households is implemented. However, one interviewed labour inspector mentions discussions and deliberations in order to identify possibilities to monitor working conditions and worker's safety in private households. This could happen, for example, if Austria ratifies the ILO-Convention No. 189 concerning Decent Work for Domestic Workers,<sup>17</sup> which is being discussed now.

The **Agricultural and Forestry Inspectorates** (*Land- und Forstwirtschaftsinspektionen*) are implemented in the nine Austrian provinces as their mandate is located within the provincial scope of responsibilities. Their legal basis is the provincial order of agricultural work (*Landarbeitsordnung*)<sup>18</sup> and on the federal level it is the Austrian Agricultural Work Act (*Landarbeitsgesetz*), which is in its content comparable with the Austrian Occupational Health and Safety Act (*Arbeitnehmerschutzgesetz*)<sup>19</sup> but applicable in the agricultural sector only (see [M(1)]). The main task of the agricultural and forestry inspectors is monitoring employers if they apply the legal provisions on workers' safety and health protection; furthermore they monitor the labour contract law (*Arbeitsvertragsrecht*).<sup>20</sup>

The Agricultural and Forestry Inspectorates have access to the farm buildings and the open spaces (fields, forest). If workers are employed for household work or farming work in households, the inspectorate is allowed to carry out monitoring in households too. The frequency of inspections is issued in the Provincial Order of Agricultural Work (*Landarbeitsordnung*)<sup>21</sup> [M(1)].

The executive authority for the law to combat wage and social dumping is the **financial police** and the **Regional Health Insurance Fund** (*Gebietskrankenkasse*). The financial police are

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<sup>16</sup> Austria, Work Inspection Act (*Bundesgesetz über die Arbeitsinspektion, Arbeitsinspektionsgesetz 1993 - ArbI/G*), BGBl. Nr. 27/1993, available at:

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008840](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008840).

<sup>17</sup> Geneva, International Labour Office, Convention No. 189, Decent Work for Domestic Workers, available at: [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_208561.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_208561.pdf).

<sup>18</sup> Exemplary for the Austrian Provinces: Austria, Provincial Government of Burgenland, Order of Agricultural Work (Gesetz vom 16. Mai 1977 über die Regelung des Arbeitsrechts in der Land- und Forstwirtschaft, Burgenländische Landarbeitsordnung 1977 - LArbO), LGBl. Nr. 37/1977, available at:

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=10000119](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=10000119).

<sup>19</sup> Austria, Occupational Health and Safety Act (*Bundesgesetz über Sicherheit und Gesundheitsschutz bei der Arbeit, ArbeitnehmerInnenschutzgesetz - ASchG*), BGBl. Nr. 450/1994 last amended through BGBl. 71/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008910](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008910).

<sup>20</sup> Austria, Law amending the labour contract law (*Arbeitsvertragsrechts-Anpassungsgesetz – AVRAG*), BGBl. 459/1993 last amended through BGBl. I Nr. 138/2013, available at:

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008872](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008872).

<sup>21</sup> Exemplary: Austria, Provincial Government of Burgenland, Order of agricultural work (Gesetz vom 16. Mai 1977, über die Regelung des Arbeitsrechts in der Land- und Forstwirtschaft, Burgenländische Landarbeitsordnung 1977 - LArbO), LGBl. Nr. 37/1977, available at:

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=10000119](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=10000119).

located at the Federal Ministry of Finance (*Bundesministerium für Finanzen*) and their main responsibility is to prevent wage and social dumping or at least to keep it at a low level [P(1)]. Therefore, the financial police investigate the employers' compliance with the Austrian standards of wage and social security contributions. The legal basis of this work is the Law to Combat Wage and Social Dumping (*Lohn- und Sozialdumpinggesetz*)<sup>22</sup> in the first place and subsequently the Employment of Aliens Act (*Ausländerbeschäftigungsgesetz*)<sup>23</sup> and the Federal Insurance Contribution Act (*Allgemeines Sozialversicherungsgesetz*).<sup>24</sup> The financial police also monitor the protection of employees but this is not their main responsibility.

All inspections carried out by the financial police are unpredictable for the employers. Inspections are based on suspicion, caused by reports of individuals or agencies on the one hand and the financial police's own investigations on the other. Inspections in private households can only be carried out in cases of reasonable suspicion, reported by individuals. In practice these are usually complaints filed by neighbours and their suspicion concerns irregular work (tax fraud) rather than labour exploitation [P(2)]. A member of the financial police gives the following statement regarding the possibilities and frequency of inspections in private households:

*From the legal opportunity that's difficult, but there are possibilities, yes. We need to have the suspicion, the justified suspicion that in that particular household someone is pursuing some form of gainful occupation. [...] Then we have a legal handle to also get inside that flat, so to access it. [...] but such situations are not really at the very front regarding their ranking in the spectrum of our tasks. [...] If it's regarding individuals who are apparently doing 'black labour' there, those are the typical neighbourhood reports, so at the neighbour's house there are constantly cars being repaired in his garage – something like that, right? But for us when it comes to, to the ranking, it's no, no high-risk control object, so to say, yes. [P(1)].*

*Das ist schwer von der rechtlichen Möglichkeit, aber es gibt Möglichkeiten, ja, es gibt Möglichkeiten. Wir müssen dann den Verdacht haben, den begründeten Verdacht haben, dass in diesem Haushalt irgendjemand, ir-, irgendeiner Erwerbstätigkeit unmittelbar in diesem Haushalt nachgeht. [...] Dann haben wir eine rechtliche Handhabe, um auch in diese Wohnung hineinzukommen, also sie zu betreten. [...] Es gibt Situationen, die aber nicht wirklich in unserem Tätigkeitsspektrum vom Ranking weit vorne sind. [...] Wenn es um Einzelne geht, die da angeblich schwarzarbeiten, das sind so diese typischen Nachbarschaftsanzeigen, also bei, beim Nachbarn werden ständig Autos repariert in seiner Garage - so irgendwie, nicht? Das ist aber bei uns vom, vom Ranking her kein, kein high-risk Kontrollobjekt sozusagen. Ja. [P(1)].*

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<sup>22</sup> Austria, Law to Combat Wage and Social Dumping (*Bundesgesetz, mit dem das Arbeitsvertragsrechts-Anpassungsgesetz, das Insolvenz-Entgeltsicherungsgesetz, das Landarbeitsgesetz 1984, das Arbeitskräfteüberlassungsgesetz und das Allgemeine Sozialversicherungsgesetz geändert werden, Lohn- und Sozialdumping-Bekämpfungsgesetz – LSDB–G*), BGBl. I Nr. 24/2011, available at: [www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2011\\_I\\_24/BGBLA\\_2011\\_I\\_24.pdf](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_I_24/BGBLA_2011_I_24.pdf).

<sup>23</sup> Austria, Employment of Aliens Act (*Bundesgesetz vom 20. März 1975, mit dem die Beschäftigung von Ausländern geregelt wird, Ausländerbeschäftigungsgesetz - AuslBG*), BGBl. No. 218/1975 last amended by BGBl. I No. 72/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008365](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008365).

<sup>24</sup> Austria, Federal Insurance Contribution Act (*Bundesgesetz vom 9. September 1955 über die Allgemeine Sozialversicherung (Allgemeines Sozialversicherungsgesetz - ASVG)*), BGBl. Nr. 189/1955, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008147](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008147).

If they encounter labour exploitation in the course of monitoring or if they receive reports of suspicions, the labour inspectorate, the agricultural and forestry inspectorate and the financial police are in charge of the following tasks:

To assess the situation if it is according to the legal provisions on workers' protection and to verify reports of labour exploitation (according to the interviewees in the professional group M, in practice many complaints are not valid or justified). If the situation is not according to the legal provisions on worker's protection and/or a reported labour exploitation proves to be true through inspections, the labour inspectorate, the agricultural and forestry inspectorate and the financial police are obliged to report the case to the District Administration Authority (*Bezirksverwaltungsbehörde*) and lodge an administrative penal procedure. Although the labour inspectorate documents the situation, it does not document whether the affected person(s) is/are migrant/s or not.

In severe cases they are obliged to file a duty at the Criminal Police but some interviewees doubt that this works effectively in practice, particularly if criminal aspects of labour exploitation are not obvious [M(2); E(1); S(1)]. Assessing and documenting the situation as well as collecting evidence are also very important for the financial police, since reporting and passing on information to other public authorities belong to their main tasks. The financial police safeguard recordings of working hours, written statements of employees and employers and photo documentation, too. Safeguarding information and evidence is very important for the financial police's reports on the offences. Also the agricultural and forestry inspectorate creates a file for each inspected employer, in which all infringements of worker's protection and other deficits regarding the worker's safety are documented. Furthermore, the inspectorate conducts and keeps records on interviews with employees and keeps their records of working times and wage slips (copies). Photos are collected and are also used as evidence. Therefore, the process of the inspectorates in assessing, documenting and collecting evidence is quite similar to the financial police's. However, only the police as an investigating authority are allowed to confiscate evidence; the labour and agricultural inspectorates can only gather copies of evidence.

Offering initial information to victims is part of the labour and the agricultural inspectorate's mandate, assistance is not. Information is provided through the distribution of an information sheet among migrant workers, who are affected by human trafficking for labour exploitation. This sheet provides initial information on employees' rights and victim support services and is available in the languages of the "new" EU countries. Victims of labour exploitation are also informed about representative institutions, namely the respective provincial chamber of agricultural labour (*Landarbeiterkammer*) or chamber of labour (*Arbeiterkammer*) or about the trade union by the inspectors [M(2)].

Enacting measures aimed at protecting the victim against further exploitation is carried out by the labour and agricultural inspectorate only regarding the employees' health and safety, not regarding exploitation. For the financial police, however, neither offering initial information/assistance to victims nor enacting measures aimed to protect them are part of the mandate. However, the financial police in Vienna are currently planning a project to inform irregular migrants about their rights and the legal consequences of irregular work in Austria. The target group of this measure are migrants who stand in a specific public place in Vienna and offer themselves for irregular services in private households on an hourly basis. In Austria, this is called "*Arbeiterstrich*" (workers' bar). The financial police distribute an information brochure in different languages among them [E(1)]. An information request was sent to the officer in charge of this project. According to the officer's response, this measure is in its beginning phase and a kick-off meeting will be held. No further information is available so far.<sup>25</sup>

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<sup>25</sup> Response to an information request, received from a financial police officer on 22 April 2014.

For data protection reasons, the labour inspectorate and the agricultural and forestry inspectorate pass on information only to other public institutions (public authorities or the police) and never to private institutions. According to the Austrian Work Inspection Act, labour inspectors are obliged to report reasonable suspected cases of labour exploitation (e.g. underpay, irregular work, human trafficking) to the financial police and reasonable suspect cases of severe forms of labour exploitation to the criminal police. However, in practice this works only to a certain degree: according to two interviewed members of the labour inspectorate, information is only passed on to the police or victim support services in cases of strong suspicion, which occurs very rarely. According to the interviewed inspectors, there is an uncertainty if suspected cases are worth reporting, since there are no standardised criteria and some labour inspectors are not sufficiently aware of labour exploitation and victim identification.

A checklist could be helpful in this regard. Although labour inspectors have basic instructions on how to assess working conditions, in practice they haven't used checklists containing criteria of labour exploitation yet. Some interviewed inspectors argue against using checklists, as they claim that individual cases of labour exploitation are very complex and cannot be encompassed by a checklist. Furthermore, an interviewee [M(1)] mentioned that employers might be able to receive such a checklist prior to inspections and therefore prepare themselves (or the company) for inspections (e.g. care for the things which will be monitored according to the checklist while neglecting others). Because of this problem, monitoring visits are carried out by members of the labour inspectorate alternately (different inspectors visit the same employer) in order to avoid the employer's possible adapting to the focus of the respective inspectors.

According to interviewed members of the labour inspectorate and members of the working group on labour exploitation, a checklist would indeed be useful. The working group on labour exploitation is currently developing a practical and plain checklist for the labour inspectorates, which will contain indicators of labour exploitation and information on how to report cases to the financial and the criminal police and on how to deal with victims of labour exploitation. Furthermore, this checklist will include contact persons at the financial police, the criminal police and victim support services. As an expected result, passing on information to the financial police and the Regional Health Insurance Fund will be easier, if it can be justified by indicators named on a checklist.

The financial police only pass on information to other public institutions that can follow up, namely the regional authorities (*Gebietskörperschaften*) which initiate an administrative procedure. Regarding private institutions the financial police are subject to the obligation of confidentiality. The financial police do not use a checklist either. According to two interviewees from the financial police, the legal provisions in the Law to Combat Wage and Social Dumping (*Lohn- und Sozialdumpinggesetz*)<sup>26</sup> are sufficient and labour exploitation is not their main responsibility area.

## **Categorisations of migrant workers and language barriers**

The Austrian Work Inspection Act is valid for all employees (Austrians, all kinds of migrants, and the health and safety of irregular workers is protected, too). For the labour inspectorate's work, it is only relevant that the company is located within the Austrian territory [M(3)].

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<sup>26</sup> Austria, Law to Combat Wage and Social Dumping (Bundesgesetz, mit dem das Arbeitsvertragsrechts-Anpassungsgesetz, das Insolvenz-Entgeltsicherungsgesetz, das Landarbeitsgesetz 1984, das Arbeitskräfteüberlassungsgesetz und das Allgemeine Sozialversicherungsgesetz geändert werden, Lohn- und Sozialdumping-Bekämpfungsgesetz – LSDB–G), BGBl. I Nr. 24/2011, available at: [www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2011\\_I\\_24/BGBLA\\_2011\\_I\\_24.pdf](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_I_24/BGBLA_2011_I_24.pdf).

However, the referral procedure and the reports at the police (financial police or alien police) differ, depending on whether migrants have a work and residence permit or not.

All interviewed members of the labour inspectorate, the agricultural and forestry inspectorate and the financial police mention that language barriers are very relevant, and for some interviewed members of the M and P group, they are even a major problem in their daily work. Of all interviewed members of professional group M, only the interviewed agriculture and forestry inspector [M(1)] mentions that usually at least one German speaking person is available when inspections are carried out. German speaking workers can act as translators for their colleagues. Particularly in construction, employees are often not only unable to speak German, but also absolutely uninformed about their rights. In such cases “everyday communication” is already very difficult and it is all the more important to inform them about their rights and to talk about legal provisions. Furthermore, due to language barriers, it is impossible for labour/agricultural inspectors to win the confidence of employees to talk about exploitative working conditions. Additionally it is very difficult for labour inspectors to receive the information needed from employees (also apart from working conditions). Sometimes employees do not even know who their employer is.

The labour inspectorate elaborated a multilingual information sheet for cases of acute endangerment of employee’s safety that states: “Please leave the working place, there is acute danger to life”. Furthermore, some inspectors with adequate language skills (e.g. Turkish) have been employed. However, these strategies only work sporadically; no systematic strategy to overcome language barriers at the labour inspectorate and the agricultural and forestry inspectorate has been implemented so far.

The financial police encounter language barriers too, and similar to the labour inspectorate, they use initial information sheets in different languages. These sheets are templates and contain the employees’ personal data (date of entering the country, date of birth, social security number) and basic questions regarding the employment (e.g. name of the employer). Unlike the labour inspectorates, the financial police have access to interpretation services if written statements of employees are needed. However, in practice the need for interpretation services arises spontaneously while the arrival of the interpreters takes a long time.

## Cooperation

The interviewed members of monitoring bodies in office-duty (central labour inspectorate and members of the working group on labour exploitation) cooperate with many actors and organisations: (other ministries - Interior, Economics and Justice, NGOs or Social Partners) when they carry out the tasks within their mandate (mainly legislation, but also information and awareness raising). According to them, the cooperation works very well, all cooperation partners are very committed to deal with the issues of “human trafficking” and “labour exploitation”. Difficulties in cooperation have been reported only with regard to the Chamber of Commerce (*Wirtschaftskammer*): According to interviewees [M(2)] the Chamber of Commerce, which represents the interests of employers, is not aware of labour exploitation or sometimes even denies its existence. An interviewed member of the Chamber of Commerce reports that members of their organisation (including the interviewee) take part in the working group meetings [E(1)].

The labour inspectors who carry out inspections in companies only cooperate in the sense of passing on information about (suspected) cases of labour exploitation encountered through inspections. Information is passed on to the financial police and the Regional Health Insurance Fund (*Gebietskrankenkasse*), and sometimes they cooperate with the Chamber of Labour (*Arbeiterkammer*). There is no systematic information flow between these actors. A reported barrier in this regard is numerous changes of responsibilities and composition in the administrative authorities due to structural reforms; therefore no long-term cooperation is



possible among the same persons [M(2)]. Because of this lack of personal contacts, the interviewed labour inspectors mention barriers in reporting suspected cases. These structural barriers become stronger, particularly since many inspectors are rather unaware of labour exploitation and therefore are uncertain to report suspicions. Furthermore, the labour inspectors do not have insight into the further proceedings if they pass on information. They do not receive information e.g. from the financial police or the criminal police on what happens with these cases or on their outcome. Therefore they mention that “cooperation” might not be the adequate term to describe this way of working together [M(2)].

Cooperation of the labour inspectorate or the financial police with other institutions in charge of preventing labour exploitation could be improved through well-established personal contacts, a checklist of indicators of labour exploitation to be used to justify suspicion or at least a contact-list of persons to report cases of suspected labour exploitation at the police or the Health Insurance Fund. Therefore, either a standardised and formalised referral system or well-established personal contacts to other public authorities are suggested.

Between the labour inspectorate and workers’ representative organisations there is no formalised cooperation [M(2)]. In case of suspected violation of workplace safety provisions, the Chamber of Labour informs the labour inspectorate. The labour inspectorate then initiates an inspection according to its mandate. There is no further exchange of data because of data protection reasons.

In cases of occupational injuries, caused by neglecting the legal regulations on the safety of workers, the labour inspectorate is obliged to cooperate with the public prosecutor, the district administrative authority (*Bezirksverwaltungsbehörde*) and the police. Furthermore, the police inform the labour inspectorate in cases of occupational injuries at construction areas. The labour inspectors then offer their technical expertise with regard to safety standards.

## **View of the organisations’ roles**

All interviewees in the monitoring bodies professional group provided suggestions for better dealing with labour exploitation and supporting victims. Currently the Austrian government addresses labour exploitation with the main aim of gathering otherwise lost taxes, which is the main responsibility of the financial police, or to prevent occupational injuries, which is the main responsibility of the labour/agricultural inspectorate. So far, labour exploitation is not directly addressed in the sense of supporting victims or improving working conditions. Thus, the interviewed members of monitoring bodies suggest that monitoring working conditions to prevent labour exploitation should explicitly be part of the labour inspectorate’s mandate. However, against the background of lacking resources, interviewees perceive resistance of the labour inspectorate in fulfilling additional tasks. Therefore, a main precondition to preventing and combating labour exploitation would be more personnel at the labour inspectorate. Furthermore, some interviewees claim for a stronger political commitment in this regard.

Some interviewees mention that the implementation of a checklist, which contains standardised criteria on labour exploitation, would help them when carrying out inspections. Using a checklist could promote general knowledge on labour exploitation among all labour inspectors [M(1)]. Furthermore, a checklist would simplify reporting to the police, since it would better support suspicion of labour exploitation [M(1)]. However, other interviewees argue against using a checklist because they doubt that it would be useful in complex individual cases. They argue that the legal provisions are sufficient when it comes to assessing labour exploitation. Furthermore, cases of labour exploitation are visible in the course of monitoring tasks anyway and inspectors have access to the relevant documents e.g. working hour records, wage slips, etc. [M(2); P(1)]. Interviewees and focus group participants, who belong to other professional groups, also share these assessments. Additionally they refer to a lack

of cooperation between the labour/agriculture inspectorate, the financial police and other public authorities, like the criminal police and private institutions and victim support services. The financial police are located at the Federal Ministry of Finance and in practice they pass on cases to the Federal Ministry of Finance but not to the prosecution. Therefore, a more effective coordination would help to reveal criminal aspects of the cases.

Furthermore, the financial police are a monitoring authority and the decisive authority regarding tax and social contribution claims too. Its superior Ministry of Finance (*Bundesministerium für Finanzen*) receives these payments. According to an interviewee [E(1)], this can lead to “general suspicion” of false self-employment, particularly in the economic sector of construction.

### **3.1.2 The Austrian Task Force on Combating Human Trafficking**

An institution which is directly in charge of combating severe forms of labour exploitation is the Task Force on Combating Human Trafficking, created by the Austrian Government in November 2004. It is responsible for coordinating and intensifying the measures taken by Austria to combat human trafficking. It is located at the Federal Ministry for Europe, Integration and Foreign Affairs (*Bundesministerium für Europa, Integration und Äußeres, BMEIA*) and members are representatives of all competent ministries, including their outsourced agencies, the Provinces and NGOs. The chairperson of the Task Force is the first Austrian National Coordinator on Combating Human Trafficking, who was appointed in March 2009. One of the Task Force’s main responsibilities is preparing, implementing and monitoring the Austrian National Action Plans on Combating Human Trafficking.<sup>27</sup> In this regard, the task force publishes reports on the implementation of measures to combat human trafficking in Austria every second year.

According to the National Action Plan, a main objective is strengthening the national and international cooperation and coordination. For this purpose, the working group “human trafficking for labour exploitation” was created in December 2012. This working group is led by the Federal Ministry of Labour, Social Affairs and Consumer Protection (*Bundesministerium für Arbeit, Soziales und KonsumentInnenenschutz, BMASK*). A main goal of the working group is to establish indicators to identify victims of labour exploitation for the labour inspectorates and to support the labour inspectorates and the financial police in dealing with cases of labour exploitation, encountered through inspections. Furthermore, the working group aims at raising awareness on labour exploitation in general [M(2)].

### **3.1.3 Workers representative organisations**

There are two main workers’ representative organisations implemented in Austria: the Chambers of Labour and the trade unions. Both belong to the social partners and are structured in a federalist manner.

The Federal Chamber of Labour (*Bundesarbeiterkammer*) is the umbrella organisation and in charge of all tasks concerning more than one province or the federal level. The Regional Chambers of Labour (*Länderkammern*) operate in all Austrian provinces. Both, the Federal and the Regional Chambers of Labour are self-governing public corporations. The Chamber of Agriculture (*Landarbeiterkammer*) is organised in a similar way. It consists of an umbrella organisation on the federal level (*Landarbeiterkammertag*) and Regional Chambers in all Provinces, except from Burgenland and Vienna. The findings of the research do not indicate differences regarding the work of the Provincial Chambers; therefore, whenever the term

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<sup>27</sup> Austria, Federal Government, National Action Plan on Combating Human Trafficking 2012-2014, available at: [www.bmask.gv.at/cms/site/attachments/5/8/3/CH2288/CMS1314878545824/3\\_nationaler\\_aktionsplan\\_2012-2014.pdf](http://www.bmask.gv.at/cms/site/attachments/5/8/3/CH2288/CMS1314878545824/3_nationaler_aktionsplan_2012-2014.pdf).

“Chamber of Labour” or “Chamber of Agriculture” is used in the report, it refers to the Provincial Chambers and not to the umbrella organisations on the federal level. This is because the Provincial Chambers have direct contact with clients and represent them and thus they have deeper insights into cases of labour exploitation and the situation of victims/employees. Should there be information relevant for one specific Provincial Chamber or the umbrella organisation, it is indicated accordingly.

The trade unions are also organised through an umbrella organisation, which is the Austrian Federation of Trade Unions (*Österreichischer Gewerkschaftsbund*) and regional offices in all nine Austrian Provinces. Furthermore, the trade unions’ representative function is divided along different professional groups. The trade unions are legally organised as associations (*vereinsrechtlich organisiert*).<sup>28</sup>

Among other tasks, the mandate of the Chamber of Labour and the Trade Union offers support, counseling and legal representation in labour law matters to employees. The legal basis for this work is the Labour and Social Courts Act (*Arbeits- und Sozialgerichtsgesetz, ASGG*).<sup>29</sup> These services are available for all workers as soon as they are organisation members. Chamber of Labour membership is obligatory for employees (except for agricultural workers/farmers and clerks), unemployed persons, persons in parental leave and trainees. For persons without or with a low income, membership is cost-free. Trade union membership is voluntary and also very cheap for persons with a low or no income. The trade unions even support non-members (e.g. third country nationals with or without work permit) as illustrated in two case studies. Although an existing membership is not the prerequisite of receiving initial support, the basic readiness to join the Union/Chamber is. A member of a trade union is quoted on how this can work in practice:

*“If we basically became aware through a call for help that third country nationals, persons in Southern Burgenland, need help and we never saw them before, they also don’t have contact with our organisation yet, by far were no members, because we are a members organisation, and in reality we are only responsible for the members, but in such a case we reconsidered offering help and when we say, they now have no possibility of spending the night somewhere in a bed, we also accommodated them in a hotel on our costs. That means [...], we feel responsible to organise that for our victims, to provide support. [...] Well, [...] we are something like a soccer club, if he says I don’t want anything to do with you, I don’t want to become a member, then we are not allowed to [support], because (...) the work and social court law says we are allowed to legally represent our so-called professional associates” [W(1)]*

*„Wir haben über einen Hilferuf aus also Drittland praktisch erfahren, dass da Menschen im Südburgenland Hilfe brauchen, wir haben das noch nie vorher gesehen, die haben auch keinen Kontakt noch zu unserer Organisation, bei weitem keine Mitglieder gewesen, weil wir sind eine Mitgliederorganisation, und in Wirklichkeit nur für die Mitglieder zuständig, aber in einem derartigen Fall haben wir überdacht die Hilfe angeboten und wo wir gesehen haben die haben jetzt dann keine Möglichkeit diese Nacht irgendwo in einem Bett zu verbringen haben wir’s halt auch untergebracht in einem Hotel auf unsere Kosten. Um das so zu um das so zu dokumentieren, das heißt bei uns steht der Mensch im Vordergrund und*

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<sup>28</sup> See [www.oegb.at/cms/S06/S06\\_4/gewerkschaften](http://www.oegb.at/cms/S06/S06_4/gewerkschaften).

<sup>29</sup> Austria, Labour and Social Courts Act (*Bundesgesetz vom 7. März 1985 über die Arbeits- und Sozialgerichtsbarkeit, Arbeits- und Sozialgerichtsgesetz - ASGG*), BGBl. Nr. 104/1985, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000813](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000813).

*alle seine Lebensbedürfnisse, fühlen wir uns verantwortlich für unsere Mitglieder zu organisieren, Unterstützung zu leisten. [...] wir sind so was wie ein Fußballclub, wenn er sagt ich will ich will mit euch nichts zu tun haben, ich will nicht Mitglied werden, dann dürfen wir nicht. Das Arbeits- und Sozialgerichtsgesetz sagt wir dürfen unsere so genannten Berufsgenossen, rechtlich vertreten“ [W(1)]*

However, these organisations are not competent for criminal law and criminal proceedings and therefore not for criminal forms of labour exploitation. Their work has a clear focus on supporting employees in labour law matters. Therefore, the dealing of workers' representative organisations with labour exploitation can lead to a neglect of criminal aspects of the respective cases (as illustrated in one case study).

The Austrian Federation of Trade Unions in Vienna offers specific services for migrant workers. They carry out different projects (financed by the EU and the Federal Ministry of Labour, Social Affairs and Consumer Protection) to inform migrants about the Austrian labour and social law, about their rights and obligations. Furthermore, they provide personal legal counselling for migrants in their mother tongue (mainly Slovakian and Czech), e.g. in cases of unjustified dismissal, denial of wages or vacation, etc. If the workers agree, the trade union contacts the employer of the respective client and tries to mediate or negotiate an out-of-court solution. According to two interviewed trade union members, this often works, since employers are often deterred from their course of action once they come into contact with the trade union. In cases in which this does not work, the trade union refers the clients to the Chamber of Labour or the Chamber of Agriculture, which provides for legal representation at the labour court.

Within their main objective, namely counselling and legal representation of employees, they carry out monitoring on whether working conditions (working hours, wage conditions, conditions regarding the safety of employees) comply with the labour law. They also safeguard information and evidence (e.g. wage slips and working contracts). The information provided by the clients is compared with the legal provisions in labour law and the factual salaries are compared to the collective agreements. Building on that, the interviewed members state that they provide a statement of the facts and figure out the further proceeding together with the client. They only get active after receiving the client's consent, particularly since dismissal is very often the consequence of an intervention by the trade union or the Chamber of Labour. If an employee wants to remain in employment and support, the trade union supports anonymously. In this regard, interviewees criticized the weak dismissal protection in Austria [W(1)].

Interventions are carried out by the trade union mostly in cooperation with the Chamber of Labour (*Arbeiterkammer*). If an employment is terminated, these organisations support victims in claiming their entitlements regarding wage and social security contributions. In this regard they pass on information to the financial police and the public insurance. Information is passed on to the labour inspectorate, if it turns out that workers' safety is endangered. Neither the Chamber of Labour nor the trade union has access to companies for monitoring activities; they are allowed to enter a company's premises only if they are invited by the company's works council (*Betriebsrat*). Therefore – and again only with the consent of the client(s) – they want to initiate monitoring through passing on information to the labour/agricultural inspectorate. According to the interviewed members of workers' organisations, there is no need to support victims after interventions, since dismissal is mostly the consequence of interventions and the employer has no access to the dismissed victim anymore.

The trade union uses a template checklist, which contains questions relating to personal data of the victim, a documentation of the steps carried out on behalf of the victim, important points to acknowledge when writing the statement of the facts, a documentation of the further

proceedings and a final evaluation. The Chamber of Labour has no checklist in this regard, according to one interviewee [L(1)], it is sufficient to compare the actual situation with legal provisions. Furthermore the trade unions and the Chamber of Labour/Agriculture carry out socio-political lobbying for employees in various economic sectors.

Similar to the interviewed members of professional group M, the interviewed members of workers' organisations mention language barriers as being relevant in their daily work. Supporting and advocating victims of labour exploitation generally requires a complicated terminology related to labour law. Challenges in communicating with migrants are not only due to a lack of understanding of languages and vocabulary but also to the meaning of terms. The relevant terminology is understood differently in different countries and the representation of employees is also differently organised within the EU. For example in Hungary, separated labour inspectorates are neither implemented for certain professional groups nor for professional associations. Interpreters are available, but not sufficiently. The trade union in Burgenland has a bilingual office which is funded by the EU. In this office, bilingual (German-Hungarian) lawyers try to overcome language barriers and inform Hungarian workers about their rights as employees in Austria. However, according to the interviewees, the trade union Burgenland has to deal more and more with Bulgarian citizens employed in Burgenland. There are no adequate measures implemented so far to communicate with them [W(1)].

The interviewed members of the trade union mention that a better cooperation with the financial police and other monitoring bodies would improve their ability to deal with labour exploitation and support victims. Furthermore, a right to visit companies for monitoring activities has been suggested. However, the main problem mentioned by the interviewees is that many migrants do not have access to workers' representative organisations. While these services are well-known amongst Austrian citizens and rather well known among EU-citizens, third country nationals do not know about them. Apart from single projects, like the bilingual office of the trade union Burgenland or the pre-departure counselling project of the trade union Vienna, workers' representative organisations do not reach out to migrants. Workers' representative organisations support victims of labour exploitation in civil-law claims, they generally do not offer specialised services for migrants (e.g. outreach work).

### **3.1.4 Migrant centres**

Migrant counselling and support centres exist all over Austria and offer a range of social support services which are usually low-threshold services [S(4)]. Such services are e.g. employment support and labour market counselling; advice in alien's legislation, and they are provided in the migrants' mother tongues. Some migrant centres additionally offer practical advice, e.g. on what to pay attention to when signing an employment contract. Some migrant centres cooperate with the public employment service Austria (*Arbeitsmarktservice, AMS*).

All migrant centres cover the specific needs of migrants (e.g. outreach concept, mother tongue counselling). Many employees of migrant centres are migrants too and cover many languages; furthermore they have access to an interpreter pool. Due to this, migrant centres are well-known among the migrant communities and the clients' trust in these organisations is reported to be high [S(2)]. However, no migrant centre specialises in dealing with migrant victims of labour exploitation.

Some interviewees encounter cases of labour exploitation in the course of providing their services. The particular trust which migrants have in these centres encourages them to report experiences of labour exploitation when using other services. Since migrant centres do not have the competence to support migrants in cases of labour exploitation, they offer initial information (e.g. basic information about the labour law and about the existence and services of the Chamber of Labour/Agriculture, workers council and the trade unions) in such cases. If the clients agree (similar to workers' organisations, migrant centres do nothing without the

consent of clients), they refer victims to the Chamber of Labour. In cases of severe labour exploitation they refer the clients to the police and to LEFÖ-IBF (Intervention Center for Trafficked Women). Some of them support victims by counseling or accompanying them to public authorities to offer translation services on site even after they have already referred them to other institutions, which offer e.g. legal representation [S(1)].

In addition to migrant centres, there are victim support services for victims of human trafficking for labour exploitation and for victims of violence (see section 5.1).

### 3.2 Forms and frequency of incidents of labour exploitation encountered by experts in their work; economic areas affected

The forms and frequency of labour exploitation encountered by experts clearly depends on their professional background and occupational responsibilities. Some interviewees report that they have never encountered labour exploitation (particularly professional group R and E).

Only a few interviewees encountered **slavery** and only in single cases; migrants weren't affected in every case. Also, only a few interviewees encountered **child labour** (if it affects migrant children, then mainly in connection with begging), while the majority of the interviewees report that child labour is a dramatically declining phenomenon in Austria, since monitoring works well and awareness regarding child labour is high among law enforcement authorities. Forced labour, including bonded labour, is encountered by experts particularly in connection with forced prostitution and sometimes also with human trafficking.

**Trafficking for labour exploitation** is encountered by some interviewees, particularly police officers and members of victim support services. Those who have experience with this form of labour exploitation encounter it in domestic work (unlimited working hours without salaries, extremely bad living and health conditions). According to interviewees it also occurs in the sectors of agriculture, construction, prostitution, gastronomy and hotels. Affected persons are particularly migrants from Eastern EU countries (Bulgaria, Romania) and third country nationals (Nigeria, Philippines, Thailand or Latin America).

The majority of the interviewees encountered exploitation of migrant workers under particularly **exploitative working conditions**. When talking about their experience with exploitative working conditions, the interviewees did not necessarily refer to the Employer Sanctions Directive (some of them are not acquainted with its content and do not know it well). They rather generally refer to overwork, payments under collective agreements and bad working or living conditions although these aspects of labour exploitation are encompassed by the Directive indeed. Sometimes workers have to pay a high share of their income for accommodation and food provided by the employer. This form of labour exploitation has been encountered by the interviewees in the following sectors: agriculture, construction and domestic work. Regarding the latter, particularly elderly care nurses in private households (24 hours care) and cleaning are mentioned.

**Table 1: Forms of labour exploitation encountered by experts/professional group**

	M	P	S	J	L	R	W	E	N	Total
<b>Slavery</b>	2	1	3	1					1	<b>8</b>
<b>Forced labour, including bonded labour (e.g. debt bondage)</b>	1	4	5	1	1				1	<b>13</b>

<b>Child labour</b>	3	1	2	1	1					<b>8</b>
<b>Trafficking for labour exploitation</b>	2	5	5	1	1	1	2		1	<b>18</b>
<b>Exploitation of a migrant worker under particularly exploitative working conditions (in the terms of the ESD)</b>	3	4	3	2	3	2	2	2		<b>21</b>

Regarding the most frequent forms of conducts contributing to labour exploitation, table 2 shows that lacking information among migrant workers about their rights and a missing, or not understandable, working contract play a particular role. Furthermore, according to the interviewees (particularly professional groups M and S), it frequently occurs that employers withhold wages or pay considerably less than what they are obliged to pay. This refers not only to wages but also to social security contributions. Interviewed members of professional group M additionally point out that the workers' health conditions are impaired, which might be due to their professional focus (monitoring working conditions).

**Table 2: Most frequent forms of conducts contributing to labour exploitation**

	<b>M</b>	<b>P</b>	<b>S</b>	<b>J</b>	<b>L</b>	<b>R</b>	<b>W</b>	<b>E</b>	<b>N</b>	<b>Total</b>
Migrant workers do not have a contract written in a language they understand, or do not have a contract at all;	3	5	5	1	3		2	1	n . a .	<b>20</b>
Migrant workers are not properly informed about their entitlements as concerns wages, working conditions, annual leave etc.;	5	4	4	2	3		2	1		<b>21</b>
Employers withhold wages or pay considerably less than what they are obliged to pay;	4	3	4	2	3	2		1		<b>19</b>
Parts of what is paid flows back to employers, e.g. for fees which the employer owes to recruiters or for food or services provided by the employer;	2	2				1				<b>5</b>
The migrant worker depends on the employer beyond the employment contract, e.g. as concerns accommodation or employment of family members	1	2	2	2	2			1		<b>10</b>
Employer does not pay social security contributions;	2	3	5	1	2	2		1		<b>16</b>
Migrant workers are not allowed to go on annual leave;		2	2	1		1				<b>6</b>
Migrant workers are restricted in their movement, either by physical barriers	1	2	2	1						<b>6</b>

or by practical means, such as withholding travel documents;										
The employer adds to the migrant worker's isolation by impeding communication e.g. communication to representatives of labour unions or to labour inspectors;	1	4	2			1				8
The migrant worker is subjected to physical violence or to threats of such violence;		1	2							3
The worker's health conditions are impaired, e.g. through labour-intensive work or long hours;	4	2	3	1	1	2		1		14
Other (please specify)										0
Don't know			8	5				4		17

According to the majority of interviewees, exploitation of migrants mainly occurs in unskilled labour, while skilled migrants (who are employed in Austria according to their qualifications and skills) have a low risk of being exploited. The three most frequent occupations named by the experts are unskilled farm workers (particularly harvesters), unskilled domestic workers (particularly cleaners) and unskilled workers in construction. Some interviewees point out that labour exploitation happens more likely in “hidden occupations”, where the employees are not visible to others (for example, people working in kitchens are more likely to be exploited than waiters or waitresses, or an elderly care nurse in a private household is more likely to be exploited than a nurse in a hospital). As table 3 shows, many interviewees - particularly in the professional group S - select the category “other”. They refer to occupations which do not belong to formal employment, namely prostitution, begging and precarious working conditions in temporary employment or false self-employment.

**Table 3: Occupations of victims of labour exploitation**

	M	P	S	J	L	R	W	E	N	Total
<b>Skilled worker e.g. electrician, foreman, motor mechanic (01)</b>	1							1		2
<b>Semi-skilled worker, particularly bricklayer, carpenter (02)</b>	2	1	3			1	1	1		9
<b>Unskilled worker e.g. labourer, porter, unskilled factory worker (03)</b>	4	1	2	2	1	3	1		1	15
<b>Farm worker, particularly farm labourer, tractor driver, harvester (04)</b>	3	4	3	1	1	1	2			15
<b>Service occupations, particularly cleaning, elder care, waiter, domestic worker (05)</b>	2	6	6	2	3	3	1	2	1	26
<b>Sales occupations e.g. shop assistant (06)</b>	1	1			1					3
<b>Clerical occupations e.g. clerk, secretary (07)</b>										



<b>Professional and technical occupations e.g. engineer, accountant (08)</b>										
<b>Other, particularly prostitution but also forced begging, criminalisation, false self-employment, temporary employment, sometimes in connection with recruiting agencies (09)</b>		2	7	1	1				1	<b>10</b>
<b>Don't know</b>				1	1			2		<b>4</b>

Regarding the gender of exploited migrants, the information provided by the interviewees varies: some interviewees mention that gender makes no difference at all, men and women can equally be exploited on the Austrian labour market. Others refer to the gender segregation on the labour market: female migrants have a higher risk to be exploited in female dominated economic sectors (domestic work, cleaning, gastronomy) and men have a higher risk to be exploited in male dominated economic sectors (construction). In the economic sector forestry and agriculture (particularly seasonal work in harvesting) there is no dominance of one gender. Two male interviewees generally mention that female migrant workers might be easier to exploit than male ones, since female workers are more likely to accept exploitative working conditions, while male workers complain earlier [P(1); R(1)].

Regarding economic sectors, the majority of the interviewees mention forestry and agriculture, domestic work in a broad sense (cleaning and/or elder care in private households), while some mention gastronomy. Some interviewees additionally mention that labour exploitation in these economic sectors mainly occurs in small-size companies and not in large-scale companies.

## 4. Risks and risk management

### 4.1 Identification of common risk factors for labour exploitation

When asked for risk factors of labour exploitation in an open question, almost all interviewees of different professional groups firstly refer to the migrant's personal situation, particularly to language barriers and a low educational level. Furthermore, many interviewees, particularly members of the professional groups P and S, refer to "psychological issues" such as a lack of self-esteem, lack of life-experience, shame, isolation and lacking self-identification as a victim [N(1); P(1); see also two case studies]. Some interviewees also mention disabilities as risk factors [M(1); W(1)]. Another important risk factor for migrant workers is, according to interviewees in different professional groups, a lack of information about their rights and about Austrian standards for working conditions [M(2); S(2); W(1); E(1); see also two case studies and Table 2]. These risk factors affect all groups of migrants.

Risk factors which particularly affect third country nationals are, additionally to those mentioned above, missing or limited residence and work permits. These persons are easier to exploit e.g. because they are vulnerable to deportation and thus have no alternatives on the labour market. Employers assume that these migrants have a low tendency to report labour exploitation [J(1); L(1); FG(L)]. While language barriers and isolation in Austria themselves prevent many exploited migrants from coming forward, for third country nationals and asylum seekers in an irregular status, this status can act as an additional barrier in seeking help. According to some interviewees (particularly police officers, judges and lawyers), offender groups explicitly "use" the irregular status of migrants for blackmailing or putting pressure on them [J(1)].

Another risk factor for irregular migrants is dependency. In many cases, the whole family finances the departure of a migrant and he/she has to pay back the "loan" through work in Austria (respectively in an EU country). This pressure makes it nearly impossible for the affected persons to refuse employment, even if the working conditions are exploitative [L(1)].

According to the information provided by many interviewees, these persons are "used to a lot" of bad working and living conditions and therefore will not complain anyway – at least in the view of the offenders. Furthermore, according to interviewees and focus group participants particularly of professional groups L, J, P and S, many of these migrants come from countries where the rule of law is not respected, where governments are corrupt, where human rights are violated and individuals cannot claim their rights. Additionally, some offenders (employers or smugglers) know where to find the migrant's family and threaten them with exercising violence if the worker decides to act against the exploitative conditions ([P(1); S(1)]).

Another risk factor which also can be perceived as a main precondition of labour exploitation of migrant workers is the wage gap between Western and Non-Western countries and within Europe between the Western and Eastern EU countries [J(1); P(1); FG(W)]. This wage gap and the migrants' experiences of poverty in their countries of origin lead them to accept underpaid work in Austria, since they do not perceive it as bad as it is from an Austrian point of view [W(1); P(1); J(1); L(1); M(1) and the focus group participants]. Furthermore, migrants will immediately lose their job if they seek help [P(1); J(1); W(2)]. Regarding the legal and institutional setting almost all interviewees mention the low risk of offenders of being prosecuted and punished and therefore of having to compensate exploited migrant workers. A main reason for this is the lack of provability. Furthermore, the lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs is mentioned as a risk factor for labour exploitation by many interviewees of different professional groups. Some of them acknowledge that there is no lack of monitoring institutions, but a lack

of personnel within these institutions. Others problematise that labour inspectorates only talk to employers when they carry out their monitoring tasks [S(1)]. They neither assess working conditions nor talk to employees. No single interviewee mentions corruption in the Austrian police or in other parts of administration. Some interviewees mention the relevance of corruption among public authorities in the migrants' countries of origin as a risk factor for labour exploitation in Austria; this mainly refers to cross-border work migration and fake social insurance confirmations.

**Table 4: Most important risk factors for labour exploitation in relation to the legal and institutional setting**

	M	P	S	J	L	R	W	E	N	Total
Low risk to offenders of being prosecuted and punished;	4	5	6	2	1	2	2	1	1	24
Low risk to offenders of having to compensate exploited migrant workers;	5	4	4	1	1	2	2	1	1	21
Lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs;	4	3	3	1	2	1	1	1	1	17
Corruption in the police;										0
Corruption in other parts of administration;		1								1
Other - Too low punishments for the offenders (P) - dependency relations to offenders (S) - illegal employment is an administrative offence and no criminal offence, that means employers have to pay a fine, which does not act deterred (S) - strict residency law (L)	1		4		1	1	1			8
Don't know		2	4	5	4	3		3		21

Regarding the personal characteristics and the initial situation of the migrant worker, the selection of three most important factors was very difficult for many interviewees since they believe that all given factors for labour exploitation of migrants are relevant. Furthermore, many of the given factors repeat the information already provided by the interviewees anyway. When asked for a selection, the majority of the interviewees chose the following given options: a "Migrant worker has a low level of education", "Migrant worker does not know the language of the country of workplace" and "Migrant is not allowed to enter legal employment". Some interviewees, particularly in the groups M, R and P, point out the importance of experiencing extreme poverty at home and particularly members of the professional group S select "Worker is prone to discrimination on behalf of their race or national minority" as important risk factor.

The latter might be due to the fact that within the S group members of migrant centres were interviewed.

**Table 5: Most important risk factors in relation to the personal characteristics and the initial situation of the migrant worker**

	M	P	S	J	L	R	W	E	N	Total
Migrant worker has a low level of education;	3	5	4	2	3	3	2	2	1	25
Migrant worker does not know the language of the country of workplace;	5	4	6		3	3	2	2	1	26
Migrant is not allowed to enter into employment;	2	3	4	1	2	1		1		14
Worker comes from a country the nationals of which are often exploited in the destination country;		1		1		1				3
Worker is prone to discrimination on behalf of their race or through their identification as belonging to a national minority (such as Roma, Dalit or sub-Saharan African)		1	5		1					7
Worker is prone to discrimination on behalf of their sex				1						1
Worker has experienced extreme poverty at home;	4	3	1	2	1	2		1	1	15
Other - Child labour in the country of origin instead of education (P) - Because of low educational level a person acting from the background can entice someone with false promises. (S)		1	1							2
Don't know			1	2						3

Regarding the situation of migrant workers at their workplace, the majority of the interviewees point out the risk factor *“The migrant works in a sector of the economy that is particularly prone to exploitation”*. Apart from this, the information provided by the interviewees is heterogeneous and no differences or similarities regarding professional groups can be identified. The named indicators of precarious employment, namely false self-employment, agency workers, employees of cleaning or security companies, posted workers and seasonal workers, are identified as very relevant risk factors, particularly by the interviewees belonging to the M group and also by one interviewee from the E group. However, the interviewees select the factors *“self-employment”*, *“The migrant worker is not directly employed by the business/organisation for which they work”* and *“The migrant is a seasonal worker”* rather than the factor *“posted work”*. One interviewee [J(1)] explains this by mentioning that the factor *“posted work”* can be integrated into the factor *“agency worker”*.

In relation to the factor that the migrant worker is not directly employed by the business/organisation for which they work, one interviewed police officer particularly mentions

the problem of evidence. If the victim does not even know who their employer is, labour exploitation will be difficult to prove. In relation to the factor “*seasonal work*”, another police officer mentions that asylum seekers (who usually have no work permit in Austria) may receive a special case work permit for seasonal work in the sectors agriculture and gastronomy. However, those who make use of this special case work permit lose their entitlements to basic social services (housing, food, etc.). After ending the seasonal work period the asylum seeker is again entitled to basic social services, but he/she has to file a new application and cannot be sure if basic social services are provided in the same place in Austria. Therefore the incentives for asylum seekers to carry out legal seasonal work are very low; regarding irregular work they are higher, since they will not lose basic social services in case of irregular work. Irregular work is, according to the interviewee, a main risk factor for labour exploitation [P(1)].

While interviewees of professional group W particularly point out the risk factor “The migrant is not a member of a trade union” but do not select it, interviewed lawyers and judges particularly point out the missing relevance of trade unions in dealing with labour exploitation, especially in precarious employment and for migrants [J(1); L(2)]. Regarding harvesters an interviewed labour inspector (professional group M) points to isolation as a risk factor. Harvesters usually have no contact with third persons.

**Table 6: Most important risk factors in relation to the situation of migrant workers at their workplace**

	M	P	S	J	L	R	W	E	N	Total
The migrant works in a sector of the economy that is particularly prone to exploitation;	4	3	4	2	3	3	2		1	<b>22</b>
The migrant works in relative isolation with few contacts to clients or to people outside the firm;	1	3	2		2			1		<b>9</b>
The migrant worker is not a member of a trade union;	1		1			1				<b>3</b>
The migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed;	3	1	5	2	2	1	1	1	1	<b>17</b>
The migrant worker is not directly employed by the business/organisation for which they work, e.g. agency workers, or employees of cleaning or security companies;	5	3	3	1	1	1	1	1	1	<b>17</b>
The migrant worker is employed as a posted worker by a foreign company;	1	2	1				2			<b>6</b>
The migrant is a seasonal worker;	1	2		2	1	1	1			<b>8</b>
Other (please specify)										<b>0</b>
Don't know		1	5	2		2		3		<b>13</b>

Regarding the role of recruitment agencies in preventing or creating vulnerability of employees to labour exploitation, the assessments of the interviewees vary depending on their profession. Particularly the members of recruitment agencies and the representative organisation of employers (the Chamber of Commerce) point out their role in preventing situations of

vulnerability to labour exploitation. One interviewee [E(1)] points out the responsibility of recruiting agencies to prevent labour exploitation. According to them, recruitment agencies are obliged to apply the labour law and the legal provisions regarding workers' protection when recruiting and referring staff. According to these interviewees, this is an important preventive measure compared to direct employment.

Furthermore, it is mentioned that these agencies look closely into working conditions of companies before they refer personnel to them. Recruitment agencies are in regular exchange with employees and employers. As a consequence they implicitly monitor working conditions and are available for employees if they encounter labour exploitation, and they mediate between the two parties (employer and employee) if something goes wrong. Interviewees of these professional groups point out the professionalism of such agencies, while acknowledging that there are individual "black sheep" among recruitment agencies [R(1); E(1)]. According to some interviewees in the beginning, when the economic business of "recruitment" developed, some of these agencies did create situations of vulnerability of migrant workers to labour exploitation but the situation has improved [E(1)].

The interviewed members of employees' representative organisation (W) and the monitoring bodies (M) take a different point of view: according to them, particularly temporary work agencies create situations of vulnerability of migrant workers to labour exploitation. One interviewee mentions an example: in Austria, the salaries of temporary workers are about 15 percent higher than those of permanent staff according to the collective agreement, because employing temporary workers should only be an exception in busy times. However, the interviewee knows many cases of companies in which great numbers of temporary workers are employed in the same company for years. The interviewee does not assume that the respective company voluntarily pays higher salaries for many years, but rather believes that the temporary workers do not receive salaries according to the collective agreement. The interviewee (a trade union representative), who mentions this example is quoted below for a general assessment on temporary work:

*So, so my philosophy is, the temporary work is the legalised abolition of all protective services in all of Europe, period. Because all temporary employment agreements have been established, that you don't need all these things or can easily surpass these things, which makes the core employees controllable, right, and temporary work, that's the, in all of Europe it's one of the biggest institutions how you can reach exploitation in a planned manner, and obviously private job advisers too. [W(1)]*

*Also, also meine Philosophie ist, die Leiharbeit ist die legalisierte Abschaffung aller Schutzeinrichtungen europaweit, Punkt. Weil alle alle Leiharbeitsvereinbarungen sind zu Stande kommen dass man alle Dinge nicht braucht wenn man, oder oder leicht umgehen kann, was für das Stammpersonal einfach kontrollierbar ist, nicht, und Leiharbeit, das ist die das ist europaweit eins der größten Einrichtungen wie man geplant zu Ausbeutung kommt, und natürlich private Arbeitsvermittler auch. [W(1)]*

Regarding the public employment agency the view of labour inspectors and workers' representative organisations is different: the Public Employment Service Austria (*Arbeitsmarktservice, AMS*) has a role in preventing situations of vulnerability of migrant and non-migrant workers to labour exploitation. The AMS is obliged to care for working conditions according to the minimum standards when carrying out services in personnel placement. The employers, on the other hand, have to prove to the AMS that their working conditions comply with the minimum standards as a precondition for receiving the cost-free recruiting services of the AMS. Furthermore, third country national workers who are placed by the AMS cannot be employed illegally, since the AMS has to organise their application for a work permit. Despite

this, individual interviewees experienced that the AMS places employees in jobs with problematic working conditions and service contracts [W(1)]. Some interviewed members of the labour inspectorate point out the role of foreign employment and recruitment agencies in creating exploitative working conditions. Particularly those located in the migrants' countries of origin or other foreign countries play an important role in creating labour exploitation in Austria because they refer "cheap staff" to Austrian agencies.

Interviewed judges and lawyers do not provide a concrete assessment of the role of recruiting agencies in either preventing or creating situations of vulnerability to labour exploitation. This is either because they believe that it depends on the individual company or because they believe that recruitment agencies have no role, neither in preventing nor in creating situations of vulnerability for labour exploitation. One interviewee [L(1)] mentioned that in irregular work – which according to the interviewee is the most important risk factor for labour exploitation – recruitment agencies play no role anyway.

According to many interviewees, the trade authorities (*Gewerbebehörden*) among others monitor the creation of recruitment agencies in Austria. There are standards and prerequisites implemented for awarding business licenses (*Gewerbeberechtigung*) respectively standards of awarding concessions and they are monitored by the trade authorities [E(1)]. According to the interviewed members of recruitment agencies it is not easy to establish such an agency in Austria. Business licenses can be withdrawn in cases of creating situations of vulnerability to labour exploitation [R(3)].

Apart from this, the following actors of monitoring recruitment agencies are mentioned by the interviewees: the financial police and the Regional Health Insurance Fund (*Gebietskrankenkasse*) examine the registration of employees and the payment of social security contributions, the labour inspectorates monitor the workers' health and safety and act to prevent occupational injuries.<sup>30</sup> Furthermore, the District Authorities and the trade supervision (*Gewerbeaufsicht*) are mentioned, the latter has a weaker role in this regard. These tasks are carried out anyhow, it does not matter whether the workers are employed directly or via a recruiting agency. Furthermore, recruitment agencies are monitored indirectly by workers' representative organisations, namely the trade union and the Chamber of Labour. An interviewed member of the Chamber of Commerce (employers' representative organisation) mentions that according to their professional experience, monitoring of recruitment agencies through workers' representative organisations is effective [E(1)].

Most of the interviewees think that monitoring recruitment agencies work effectively in Austria. The exceptions are the interviewed members of the labour inspectorate and the trade union: labour inspectors point out difficulties in monitoring, particularly with foreign recruitment agencies [M(2)]. Inspections in these cases are difficult in themselves and it is even more challenging to impose sanctions: the inspectors have the competence to prohibit business activities in cases of labour exploitation (e.g. over-work and under-payment). However, even in such cases, the respective companies e.g. located in Slovakia often declare insolvency and establish a new company within weeks.

Therefore, the main problem is the lack of willingness of public authorities in neighbouring countries to cooperate with the Austrian authorities. The interviewed members of professional group M criticize the ineffectiveness of the cooperation of foreign authorities when carrying out inspections: the working conditions of workers who are employed as posted workers by foreign companies are not verifiable in practice [M(3); P(1)]. An interviewed member of the

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<sup>30</sup> In this regard, an interviewed labour inspector points out that the risk of occupational accidents is five times higher in temporary work than in regular employment. Therefore the interviewee believes that temporary employment and subcontracted labour causes structural risks for employees generally which might be higher for migrants (due to language barriers and a low acquaintance with Austrian standards and operational procedures).

labour inspectorate points out that, particularly in cases of temporary and/or posted workers, inspections are difficult since the workers often do not know who their employer actually is.

## 4.2 Prevention measures aimed at reducing the risks of labour exploitation and the obligations of specific organisations in this area

Prevention measures aimed at reducing the risks of labour exploitation are implemented as pre-departure programmes by the trade unions and the Viennese Municipal Department 11. The Austrian Task Force on Combating Human Trafficking has implemented a measure to prevent the exploitation of domestic workers in diplomatic households and the working group against labour exploitation currently plans implementing measures to make reporting easier for labour inspectors and the financial police. Apart from counseling services for migrant workers, which have a preventive function indeed, there are no obligations of specific organisations in this area.

The trade unions offer preventive measures aimed to reduce the risks of labour exploitation. The offices of the trade union in Vienna and Burgenland publish and distribute **information brochures in Austrian Eastern neighbouring countries** (Czech Republic, Slovakia, Hungary) in the respective languages, particularly for employees in the employment sectors, which are very prone to exploitation such as construction or harvesting [W(2)]. Furthermore, they carry out personal counselling of migrant employees about their rights and information events in the countries of origin (mainly Czech Republic and Slovakia). This can be seen as a **pre-departure information programme**. The demand for such measures in the neighbouring countries is very high according to the respective interviewees, but the Federal Ministry for Labour, Social Affairs and Consumer Protection (*Bundesministerium für Arbeit, Soziales und KonsumentInnenenschutz*) will cut the funds for these measures in 2015. The trade union Burgenland has a **bilingual office**, in which legal advice and advocacy are offered for Hungarian workers who work in Burgenland. According to the interviewed members of the trade union, the Austrian government itself does not offer any pre-departure programmes; however, the trade union does by carrying out information events about the Austrian Labour Law in Hungary (in Hungarian language). Furthermore, they organise **regular's tables (Stammtische) in Hungary** for Hungarian seasonal farm workers/harvesters in Burgenland. These seasonal workers live and work partly in Burgenland and partly in Hungary. Additionally, the trade union enforced a collective agreement for temporary workers which regulates minimum wage standards.

The **Vienna Municipal Department 11** carries out a pre-departure measure to prevent labour exploitation of children. It tries to do educational and awareness-raising work in the home countries of the children, to draw attention to the fact that children are exploited and enticed by false promises, that there are organisations that do not care about the children but the money; that the children have to hand over all their income to clear someone's debts or to pay back for transportation, accommodation etc. This institution also provides training for social workers in the victims' home countries and helps to implement services that take care of those children and continue awareness-raising initiatives. Regarding labour exploitation of domestic workers in diplomatic households, the **Austrian Task Force on Combating Human Trafficking** (see section 3.1.2) provides domestic workers with information about their rights (to have a room to lock for their own, bank account, leisure time, minimum wages) and about labour exploitation in their mother tongue when they apply for visa. Their employers are not allowed to be present at these information events. Furthermore, diplomats who employ domestic workers have to provide the Foreign Ministry with the workers' documents and the working contracts. Domestic workers have to prove that they have a bank account where the



employer transfers their wages to. A police officer who participated in the focus group discussion mentions about this measure:

*B: So I can only mention the diplomatic households. Not only this training, but that we in Austria have changed the mode, that domestic workers receive the legitimation card for a maximum of six months and need to audition every six months, already need to appear at the first audition personally, the possibility needs to be given to also speak without diplomatic employers. The employment contracts need to be brought with them, the accounts, so the health accounts and also access possibilities, the house plan needs to be presented, that – that there is enough room for the domestic worker and so on. That means, it struck some diplomats very hard, because they say: “She needs to take my floor-plan with her?” – but I cannot employ someone who is still living with me, because I only have a garage left. That was a very large preventive measure, I would say, we also sold it very well here in Austria as good practice. [FG(P)]*

*B: Also ich kann nur die Diplomatenhaushalte erwähnen. Nicht nur diese Schulung, sondern, dass wir in Österreich den Modus verändert haben, dass Hausangestellte die Legitimationskarte maximal sechs Monate erhalten und alle sechs Monate vorsprechen müssen, bereits beim ersten Vorsprechen unmittelbar erscheinen müssen, die Möglichkeit gegeben sein muss auch ohne diplomatischen Personal zu sprechen, die Arbeitsverträge müssen mitgebracht werden, die Konten, also die, die Krankenkonten und auch Zugriffsmöglichkeiten, es muss der Plan, der Wohn- und Hausplan vorgelegt werden, dass -, damit genug Raum für die Haushaltshilfe da ist und so weiter. Das hat, ist sehr aufgestoßen manchen Diplomaten, weil die sagen: “Die muss ja einen Hausplan mitnehmen?”, aber ich kann keine anstellen, die noch bei mir lebt, wenn ich nur eine Garage mehr habe. Also das war eine sehr große Präventionsmaßnahme, die würde ich sagen, die haben wir in Österreich so als good practice auch so ganz gut verkauft. [FG(P)]*

This measure was promoted as good practice by the Task Force on Combating Human Trafficking. The **working group against labour exploitation** (see section 3.1.2) works on the policy level regarding prevention of labour exploitation: It develops and discusses political ideas and measures. Furthermore, the working group informs relevant actors about recently implemented laws and/or legal provisions. An interviewed member mentions that the working group on labour exploitation plans measures to simplify the reporting of the labour inspectorate and the financial police: Not only a checklist which contains indicators of labour exploitation is planned, but also measures to reduce the administrative efforts of reporting e.g. through enabling online reporting of suspected cases of labour exploitation [M(2)].

The information provided by the interviewees generally indicates that prevention to reduce risks of labour exploitation is – apart from the above named projects – mainly carried out indirectly through migrant counselling centres, the labour inspectorate and recruitment agencies. Indirectly means that the prevention of labour exploitation is not explicitly part of these organisations’ mandate or the main goal of these measures. Inspections by the labour inspectorate can also be preventive to labour exploitation. Recruitment organisations check companies in detail (working places, working tasks, workers safety, etc.), talk to employees and the employers before they refer personnel to companies. An interviewed recruiter of 24-hour care nurses mentions that their organisation assesses the caring situation (the professional requirements) before recruiting a carer. According to the interviewee, this is very important to prevent the carers from work overload. If a carer is not sure if he/she is able to cope with a certain caring situation or certain care needs, he/she can refuse in advance.

Additionally, the homepage of the interviewee's organisation offers information about the legal conditions regarding 24-hour care in Romanian language [R(1)]. Also here, preventing labour exploitation is not the main purpose; the main purpose is to create long-term business relations. The counseling services for entrepreneurs and employers at the Chamber of Commerce work in the same way: although it is not their main goal, they can have a preventive function regarding labour exploitation [E(1)].

An interviewed member of an employers' organisation identifies a general trend to implement mechanisms of standard-setting and accreditation at national and international level among companies. The interviewee believes that such mechanisms have an important role in preventing labour exploitation [E(1)]. Regarding standard setting, one interviewed member of the trade union mentions a regulation implemented throughout Europe according to which every employee has to have a written service note (*Dienstzettel*) which documents the main rights and duties arising from employment. Particularly against the background of different national labour laws within the EU (and even more beyond the EU) the interviewee emphasizes the importance of standard-setting and accreditation at international and national level [W(1)].

Regarding pre-departure information programmes, information about human trafficking and labour exploitation is available in the Austrian embassies in the employees' countries of origin [S(1)]. Furthermore, the Chamber of Commerce (*Wirtschaftskammer*) has branch offices in third countries where interested persons receive information about the "Red-White-Red-Card" (*Rot-Weiss-Rot-Karte*). It entitles (key) qualified migrants which are in demand at the Austrian labour market to fixed-term settlement and employment by a specific employer for a period of twelve months [E(1)].<sup>31</sup>

Most of the interviewees cannot give information on pre-departure programmes or mechanisms of standard-setting and accreditation. Thus, they are not in the position to assess their effectiveness.

The representative of the Chamber of Labour who participated in the focus group discussion points out the **preventive function of legal provisions**, particularly the severe punishments according to the legal provisions on alien employment. He/she mentions that in the case of repeated irregular employment of a certain amount of foreigners the administrative punishments can go up to 50,000 Euros. According to the interviewee, they can be seen as a preventive measure since particularly exploiters usually have strong economic interests, and this amount acts deterrent. The interviewee also mentions the Law to Combat Wage and Social Dumping (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSDBG*). According to this law, under-payment of (migrant) workers is an administrative offense which has not been the case before the LSDBG was implemented.

Furthermore, some focus group participants (professional group P, S and L) mention the currently established **Centre for Undocumented Workers**. This is an advisory centre with the aim to provide an easier access to justice for irregular workers whose access is restricted otherwise. The participating member of professional group S points out that outreach work will be a main and important part of the work of this centre. Through outreach work, migrant workers can be informed about their rights "in advance" and therefore preventive. This centre is financed by the Federal Ministry of Labour, Social Affairs and Consumer Protection (Bundesministerium für Arbeit, Soziales und KonsumentInnenenschutz), the trade unions and the Chamber of Labour and has been opened in March 2014.

The focus group participants homogenously and clearly mention that not enough is being done yet to prevent labour exploitation in Austria. In particular, the obligation to inform migrant

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<sup>31</sup> See [www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card.html](http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card.html).

workers about their possibilities to access justice according to the sanction guideline is not yet sufficiently implemented. Currently, irregular workers in custody pending deportation receive a leaflet or at least should receive it from the police. It contains rudimentary information about the rights and the procedure of claiming back pay of denied wages. However, the participants (particularly professional groups L, W and S) perceive it as inefficient and are cynical since persons in custody pending deportation might have concerns different from claiming back pay of denied wages.

### **4.3 Protection against (repeat) victimisation: actions undertaken by the police to protect victims against the risk of repeated victimisation, including how the police conduct investigations**

Many interviewees, who are not **criminal police** officers, do not know how exactly the police would treat victims of labour exploitation staying in Austria illegally and who are identified during a raid. But they assume that the police would rather treat them as illegal residents than as victims of labour exploitation [J(1); P(1)]. Also the focus group participants assume the risk of being treated as offender as given for illegally staying migrant workers. However, one focus group participant (S) who works in a victim support service acknowledges that in the meantime 50 percent of the clients are referred to their organisation by the criminal police.

The **financial police** would see them as both: as staying in Austria illegally and as victims. The financial police are obliged to inform the alien's police about persons, who stay in Austria illegally. The financial police treat them also as victims of crime and informs them about possibilities to claim for back pay of denied wages and compensations. In the first place the financial police consider these workers as witnesses [P(1)]. However, the lawyer who participated in the focus group discussion mentions that for the financial police, the affected migrant immediately slips into the role of offender. According to the interviewee's professional experience, reports at the alien police are carried out very quickly by the financial police and a proceeding on residency permits starts quickly too, while victims' support is missed out.

Interviewed police officers differentiate according to the **aim of the raid** respectively according to the police department which carries it out: if it is the alien police, migrant workers would mainly be seen as illegally staying in Austria. If it is the criminal police investigating a case of labour exploitation (otherwise they would not carry out a raid), the migrant workers would mainly be seen as victims [P(1)]. However in practice, most inspections are carried out by the financial police who take the alien police with them or inform the alien police in case of suspicion regarding irregular migrant workers. Therefore, the probability for victims illegally staying in Austria to be treated as offenders is higher than to be treated as victim of labour exploitation. This assessment is also shared by an interviewed criminal police officer:

*No, unfortunately [they are treated] as illegal persons residing in Austria, that's the honest response. And we obviously try to counteract that, that it's not like that, but unfortunately it's always that, because that's the most attackable, that's what I have here, is someone here lawfully or not lawfully and then it's basically, then the procedure is already running and maybe we will then try to identify victims of human trafficking. [P(1)]*

*Nein, leider als illegal Aufhältige, das ist eine ehrliche Antwort. Und wir versuchen natürlich da gegenzusteuern, dass es nicht so ist, aber das ist leider Gottes immer so, weil das ist das Angreifbarste, das ist das was ich da habe, ist jemand rechtmäßig hier oder nicht rechtmäßig hier und dann ist das quasi dann läuft das Verfahren schon und dann eventuell versuchen wir dann Opfer des Menschenhandels zu identifizieren. [P(1)]*

According to interviewed police officers, procedures against persons illegally staying in Austria are much easier to initiate for the police than procedures against perpetrators of labour exploitation. The victim perceived as illegally staying is referred to the alien police. The alien police would then take them into deportation detention (*Schubhaft*) and provide them with an information sheet. This information sheet is available in different languages and informs foreigners in detention about their rights under Art. 29 of the Alien Employment Act (*Ausländerbeschäftigungsgesetz, AuslbG*) dealing with claims for compensation of denied wages and social security contributions. An interviewed police officer mentions a problem affecting asylum seekers: a violation of the Alien Employment Act can have a negative impact on their application. If the affected asylum seeker has a special case work permit for seasonal work and he/she reports working over hours, it would be an administrative offense (since he/she is only permitted to work a certain amount of hours). In such cases, the victim would be seen as offender and his/her access to justice is restricted [P(1)]. A member of the Chamber of Labour points out that there are legally punishable actions which are not mentioned in the criminal code but in the Alien Employment Act, namely particular forms of labour exploitation, e.g. the exploitation of underage persons or work under particularly exploitative conditions, affecting third-country nationals. These legal provisions are in practice not applied according to him. The participating police officer supports this view by mentioning that it needs a severe bodily injury or a rape for such cases to come to the criminal police, labour exploitation alone seems to be not sufficient in this regard.

Also, an interviewed lawyer mentions that labour exploitation is no issue in the daily work of the police and not the goal of raids. Therefore, migrant workers encountered through raids won't be seen as victims. The only exception is prostitution (e.g. raids in brothels) where the opposite is the case: Prostitutes are primarily seen as victims of sexual exploitation even if they stay illegally in Austria. Many interviewees share this assessment of a higher awareness and a better victim support on the side of the police in prostitution in connection to human trafficking [P(2); S(1)]. If it turns out that a person is a victim of human trafficking respectively prostitution the police inform them about victim support services. These organisations would provide safe housing for the victims. But in other cases of labour exploitation the victims would mainly be seen as illegally staying persons, who will be deported but can still claim for their denied wages and social security contributions. However, in very severe cases of labour exploitation a victim can be granted residence on humanitarian grounds even if he/she was illegally staying.<sup>32</sup>

A member of the victim support service mentions that their organisation offered training for police officers in identifying and supporting victims of human trafficking. According to this interviewee, this training had positive consequences: police officers treat (irregularly staying or working) migrants as victims of labour exploitation more often after having received the training. However, this training is not obligatory for police officers, and still illegally staying migrant workers are more likely to be treated as offenders rather than as victims by the "average police officer".

#### **4.3.1 Actions taken by the police**

In Austria, victims of violence or human trafficking are generally entitled to victim support and litigation services (legal and socio-psychological assistance), financed by the Federal Ministry of Justice. Victims of labour exploitation not being victims of human trafficking or violence are excluded from this definition and thus from these services. Therefore, the actions taken by the police clearly depend on whether the victim of labour exploitation is also a victim of human

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<sup>32</sup> Austria, Asylum Act (*Bundesgesetz über die Gewährung von Asyl, Asylgesetz 2005 - AsylG 2005*), BGBl. I Nr. 100/2005, available at: [www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20004240/AsylG%202005%2c%20Fassung%20vom%2016.02.2014.pdf](http://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20004240/AsylG%202005%2c%20Fassung%20vom%2016.02.2014.pdf).

trafficking or not. If human trafficking is an element of the case, the police act in cooperation with the NGO LEFÖ (victim support service) or the Youth Welfare Authority (*Jugendwohlfahrt*) in cases of affected children. The police organise witness protection if needed (since 2012 there is a department at the police, specialized on witness protection). Generally the police are obliged to inform victims of human trafficking/violence about victim support services or NGOs such as the Caritas. However, the police are not obliged to refer them to support services. No referral procedure is implemented. Regarding asylum the interviewees recognise that some officers might recommend victims of labour exploitation to apply for asylum because they receive temporary residence permits until the proceeding has ended [P(3); S(1)].

In the field of prostitution there is an institutionalised cooperation between the police and victim support services but not in other cases of labour exploitation. An interviewed judge believes that victims receive an information sheet from the police. An interviewed member of a migrant centre mentions that such an information sheet does not help migrants. Even if they can understand the language, it is not enough to enable them to make use of it. The effectiveness of such an information sheet can be doubted generally and particularly against the background of a lack of confidence of migrant workers in the police [S(1)]. Furthermore, the main requirement for receiving this information sheet (or any other supportive measure) by the police is that the person is identified as a victim of labour exploitation. Because of a lack of awareness on labour exploitation among most of the police officers this very rarely happens. At the same time, interviewees, particularly interviewed members of the professional group M, mention that many victims are also not interested in being identified as victims of labour exploitation, they do not perceive themselves as such. To illustrate this assessment, an interviewed judge is quoted:

*[...] The victims are often not interested in being recognised, because, well, they don't see themselves as victims, although they are victims, yes, still somehow, subjectively in this situation somehow do profit, otherwise they often wouldn't do it, right. [...] So these victims, it's not always only the one who stands behind the other one with a gun, but it's the one who does it, that he can somehow earn money, yes, but obviously still under massively exploitative circumstances, right, they are often not willing to cooperate at all, right and that's why they are not easy to identify, right. Good. [J(1)]*

*Sind die Opfer sehr oft gar nicht daran interessiert dass sie erkannt werden, weil eben sie selbst sich gar nicht als Opfer sehen, obwohl sie Opfer sind, ja, immer noch irgendwie, ja, subjektiv, in aus dieser Situation halt irgendwie doch profitieren, sonst würden sie's ja oft nicht machen, nicht. [...] Also diese Opfer ist ja nicht immer nur der der hinter dem einen mit einer Pistole steht sondern das ist der der halt das macht, ja, damit er halt irgendwie ein Geld verdient, ja, aber natürlich trotzdem unter massiv ausbeuterischen Verhältnissen, nicht, die sind ja oft gar nicht gewillt zu kooperieren, nicht. Und die sind gar nicht deswegen sind's nicht so leicht zu erkennen, nicht. Gut. [J(1)]*

Many of them only want to remain in employment even if the working conditions are bad compared to Austrian standards. Therefore, many interviewees believe that particularly in cases of less severe forms of labour exploitation (civil law cases, rather than criminal law cases) the police do nothing to support victims. Interviewees have never heard of any case where a police officer referred a worker to the Chamber of Labour for legal advice.

Regarding investigations conducted by the police, an interviewed member of a victim support service is convinced that a lot of tactics and strategies are necessary for police officers when it comes to labour exploitation and identifying victims:

*There are some police raids, where officers who are acquainted with the scene in the area of human trafficking go with them and who are also very well informed by the Federal Criminal Police Office when it comes to the area of labour exploitation, they are just top (...) who, let me put it like this, when it comes to Chinese restaurants know exactly that he maybe gets one Euro per day and maybe has to sleep under the sink, so doesn't find any living situation at all, and who question the people with a completely different touch and create trust, so that the person also says something (...) and one actually needs a separate police tactic and strategies to (...) but if it only concerns an Alien status check by chance, I doubt that they would question someone for that and also to educate the person, that she has possibilities of staying here and to receive legal protection. [S(1)]*

*Da gibt es ja einige Razzien von der Polizei, wo zb szenekundige Beamte vom Bereich Menschenhandel mitgehen und die auch im Bereich Arbeitsausbeutung sehr gut informiert sind vom Bundeskriminalamt, die einfach top sind... die jetzt sag ich mal in Chinarestaurants genau das wissen, dass der vielleicht einen Euro pro Tag bekommt und vielleicht unter der Spüle schlafen muss, also gar keine Wohnsituation vorfindet und die ganz mit einem anderen Fingerspitzengefühl die Person befragen und auch das Vertrauen schaffen, damit die Person 'was erzählt ... und das sozusagen braucht aber eine eigene Polizeitaktik und Strategien um das zu ... wenn das aber zufällig sozusagen eine Fremdenrechtskontrolle nur betrifft, glaub' ich weniger, dass die auf das hin befragen und auch die Person aufklären, dass sie Möglichkeiten hat um hier bleiben zu können und einen Rechtsschutz zu erfahren. [S(1)]*

In this quote the interviewee describes the “ideal police officer” in dealing with victims of labour exploitation, but clearly doubts that the average police officer proceeds this way. According to the interviewee, every migrant who enters the country should receive information about the asylum procedure anyway, but he/she does not know how this is handled in practice.

The information provided by the interviewed police officers differs in this regard. According to them, the police are very effective in investigating cases of severe labour exploitation. An interviewed police officer mentions the importance that a victim understands his/her rights. According to this interviewee the victim might say at the proceeding that he/she did not understand his/her rights and as a consequence, all evidence obtained by the victim's testimony shall be excluded.

Furthermore, there are witness protection programmes offering high protection, but a victim is only eligible for this programme if she/he is highly endangered, when she/he has to absolutely fear for her/his life. In addition, there is a preparation period to this programme, so it is not an immediate solution. Most cases of labour exploitation are likely to be more harmless but whenever there is a criminal organisation behind inhuman exploitation at large scale, a person who does not behave accordingly is in serious danger [P(1)].

The findings show differences between professional groups when it comes to the assessment of the supportive role of the police in dealing with victims of labour exploitation. Particularly, the interviewed police officers and judges stressed the supportive function of the police, while mainly interviewed members of victim support services and migrant centres said that the police do not support or barely support victims of labour exploitation.

Therefore, the role of the police in supporting victims or even treating them as perpetrators (in cases of irregular work/missing residence permit) was raised in the focus group discussion as a controversial issue from the interviews. The participating police officer confirms that labour

exploitation is a sub-ordinated issue at the police and that the average police officer has no or little experience with it. Particularly “mild cases” of labour exploitation, without (obvious) criminal elements, are in fact not in the responsibility field of the police. In such cases, police officers advise victims to contact the Chamber of Labour. However, they do not probe to figure out eventually included criminal aspects of the reported cases, e.g. through questions like: “What are the circumstances, why are you coming to us?” Although this focus group participant perceives this as problematic, he/she still understands this lack of awareness since police officers have many tasks. Therefore, many of them are simply over-strained in identifying criminal aspects in cases of labour exploitation, particularly if they are not obvious. According to the police officer it is a matter of coincidence that a victim gets in contact with an officer who is very interested in (criminal forms of) labour exploitation or has recently attended a seminar on it.

To address this lack of awareness, the Federal Criminal Police Office (*Bundeskriminalamt*) organises regular training sessions on human trafficking and labour exploitation for different members of the criminal justice system (police officers, judicial practitioners, etc.) together with the victim support service LEFÖ. The assessment of a lacking awareness about labour exploitation among police officers is supported by one interviewee [S(1)], who mentions the need for indicators to recognise labour exploitation at the criminal police. The interviewee appreciates the increased awareness of police officers regarding exploitation in prostitution which has not been the case several decades ago. Having this in mind, the interviewee perceives that the awareness of the police could also increase regarding labour exploitation in the future. In this regard, the interviewee mainly criticises the labour inspectorate and the financial police for their focus on occupational safety and fiscal issues.

### 4.3.2 Investigation and prosecution

According to some interviewees’ experience, proceedings on labour exploitation are mostly terminated because of lack of evidence. In 2013 there was only one criminal proceeding in Vienna according to §104 of the Austrian Criminal Code (*Strafgesetzbuch, StGB*)<sup>33</sup> which punishes the deprivation of liberty of a person through slavery and slavery-like practices. At the same time, there were 70 criminal investigations of cases encountered through inspections by the police. One interviewed police officer explains this gap with the lacking readiness of victims to give evidence and to turn to the police. If victims turn to the police on their initiative it is – according to the interviewee’s experience – only in “smaller cases” of labour exploitation and the victim wants to take revenge against the employer. If the police’s investigation cannot work effectively because of a lack of evidence, the Court cannot deal with the case effectively either. A quote from an interviewed police officer shows these difficulties in the provision of evidence:

*Another example, where in some cases there are investigations but they lead to absolutely nothing, are woodsmen, forestry workers, Poles, Slovenia or from wherever. They are spread in a certain area; you don’t find them at all. You obviously can’t get there; you need, need to catch [them]. Then I would say OK, he is not registered, I have an illegal worker, then I can check according to Financial Law that the Finance will do something, but criminally you need to prove it first, he [the victim] will say “No, I just helped out today, I just wanted to look at it, what do you want?” Now there are the human rights activists who say, “Why aren’t you doing anything?” We also know that a lot happens there. He doesn’t want to be*

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<sup>33</sup> Austria, Criminal Code (*Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen, Strafgesetzbuch - StGB*), BGBl. Nr. 60/1974, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296).

*exposed, he doesn't feel like a victim, because he does earn quite well for himself, the other one [employer] says I earn very well with the illegal workers too. In reality we have a case of human trafficking in the sense of labour exploitation (...) The problem with labour exploitation is quite diverse, but firstly they need a victim, who articulates himself in that direction [...] That means in reality we are talking about an area where there are many victims, where there are many forms of exploitation, but our hands are tied or partly it's hardly realisable that we can also catch them."*  
[P(1)]

*Ein anderes Beispiel, wo's fallweise bei uns sehr wohl Ermittlungen gibt, die aber absolut ins Nichts führen, sind Waldarbeiter, Forstarbeiter, Polen, Slowenien oder von wo auch immer her. Die sind auf ein Gebiet aufgeteilt, die finden Sie gar nicht. Da kommen Sie natürlich nicht hin, die muss man einmal erwischen. Dann sag ich Ok, der ist nicht angemeldet, da hab ich einen Schwarzarbeiter, da kann ich nach dem Finanzrecht schauen, dass die Finanz was macht, strafrechtlich das musst ihnen erst nachweisen und der sagt "Nein, ich hab heut ausgeholfen, ich wollt mir das anschauen, was wollt ihr?". Jetzt kommen die Menschenrechtler und sagen "Warum tut's da nichts?" Wir wissen es auch, dass da so viel passiert, der will nicht dass er dass er aufklatscht wird, der fühlt sich nicht als Opfer, weil er verdient für sich sehr schön, der andere [Arbeitgeber] sagt ich verdien mit die Schwarzarbeiter sehr schön. In Wirklichkeit haben wir aber einen Menschenhandel vorliegen im Sinne von Ausbeutung(...) Das Problem der Arbeitsausbeutung ist irrsinnig vielfältig, aber Sie brauchen zuerst einmal ein Opfer, das sich auch in diese Richtung artikuliert. [...] Das heißt wir reden in Wirklichkeit ja über einen Bereich, wo es viele Opfer gibt, wo es viele Arten der Ausbeutung gibt, uns aber die Hände gebunden sind, oder es teilweise kaum umsetzbar ist, dass wir die auch erwischen." [P(1)]*

While most of the interviewees, particularly police officers, doubt the effectiveness of the prosecution in dealing with labour exploitation, one interviewed prosecutor believes that prosecution is carried out effectively; however this interviewed prosecutor is the only one who provides this assessment. However, he/she provides suggestions concerning how to increase effectiveness, namely more staff to deal with cases more quickly, this means to reduce the time period between the criminal act and its prosecution/punishment. An interviewed judge points out that offenses in connection with labour exploitation are very complex, and resources are lacking. Therefore, investigation and prosecution are not carried out effectively. This interviewed criminal judge also suggests to increase personnel, particularly at the police and, according to him/her, labour exploitation should be treated similarly to the way business crimes are treated:

*More staff, particularly in the case of the police that they simply process it in that way and investigate in a way that you can sue it properly and ultimately also bring it to a conviction. That's often very difficult; they always hang it onto the victims, that's the simplest opportunity. And I think if you were to somehow investigate that, with observations, with the monitoring of cash flows, telephone surveillance and, and, and, yes, if it were to be removed like economic offences and it were investigated like that, then surely more would come out of it, but they simply have, the resources. [J(1)]*

*Mehr Personal, vor allem bei der Polizei denk ich, nicht. Dass die das einfach so aufbereiten, ja, und so ermitteln dass man halt das dass man das dann auch ordentlich anklagen und auch dann letztlich zu Verurteilung bringen kann, das ist dann oft sehr schwierig, die hängen das halt immer*



*an den Opfern auf, das ist ja die einfachste Möglichkeit, aber das ist dann wieder der der dünne Faden an dem das immer hängt, nicht, und ich denk mir wenn man das irgendwie ermitteln würde, mit Observationen, mit Überwachung von Geldflüssen, Telefonüberwachungen und und und, ja, wenn man das so wie Wirtschaftsdelikte aushebeln würde, ja, und so so ermitteln würde, ja, dann würd sicher mehr rauskommen, aber da haben's einfach, das, Ressourcen. [J(1)]*

This assessment is shared by other interviewees. They claim for more resources for the entire criminal justice system, since the prosecution of severe labour exploitation is a resource-intensive work.

When it comes to civil procedures, the effectiveness is perceived as higher. While the criminal justice perspective on labour exploitation is lacking (apart from prostitution), the dealing with labour exploitation at the civil and the labour court works effectively. Here, the employees' claims and entitlements are enforceable indeed [J(2); L(1)].

## 5. Victim support and access to justice

### 5.1 Victim support, including available support services

As mentioned in section 4.3.1, victims of labour exploitation are entitled to victims support when human trafficking or violence is involved in the case. For them, victim support services are available free of charge. They are financed by the Federal Ministry of Justice. Victims of labour exploitation without trafficking or violence are excluded from this definition of “victims” and thus from these services [S(4); J(1)]. A member of a victim support service who participated in the focus group perceives this narrow definition of “victims” as problematic:

*It only depends, if in that sense it is a victim, from a criminal perspective, or not, because victims are talked about, according to criminal law. [...] And here we are again at the problem: there is a definition, according to criminal law, of victims in Austria and that means: victims of a criminal offence. If it's “just”, in inverted commas, labour exploitation, then it's no criminal offence, there is no victim [and no victim support service] [FG(S)]*

*Hängt jetzt nur davon ab, ob's in dem Sinne strafrechtlich ein Opfer ist oder nicht, weil da wird von Opfer gesprochen strafrechtlich. [...] Und hier sind wir wieder beim Problem von vorher: es gibt eine strafrechtliche Definition von Opfer in Österreich und das heißt: Opfer von einem strafrechtlichem Delikt. Wenn's "nur" Arbeitsausbeutung ist unter Anführungszeichen, dann ist es kein strafrechtliches Delikt, es gibt kein Opfer [und keine Opferschutzereinrichtung]. [FG(S)]*

Apart from Protection against Violence Centres (*Gewaltschutzzentren*), there are only two support services implemented for victims of severe forms of labour exploitation and human trafficking, namely the LEFÖ-IBF (Intervention Centre for Trafficked Women) and the “Drehscheibe” at the Municipal Department 11 of the City of Vienna (*Magistratsabteilung 11 der Stadt Wien*), both located in Vienna. An advice centre specialised on undocumented workers has just been opened. Furthermore, the Men's Health Centre in Vienna currently plans to offer victim support services for male victims of labour exploitation.

The mandate of these victim support services is to provide protection for victims (women, children) of all kind of exploitation (labour exploitation, sexual exploitation, etc.) and human trafficking. They provide the following support: offering accommodation for victims; counselling, litigation services; offering German courses, support in access to the labour market and to housing. Furthermore, victim support services take part in diverse activities, like information campaigns, research, working groups, etc.

Clients are mostly referred to victim support services by the police, though sometimes they turn to these organisations on their own initiative. This requirement of self-identification as victim and the self-initiative to seek help is perceived as problematic by one interviewee [S(1)], since exploited persons are usually under pressure. According to this interviewee, in practice it needs “others” like authorities, the police or other NGOs, who refer these victims to their organisation, but these authorities very seldom perceive labour exploitation as a form of trafficking women; they more likely perceive sexual exploitation in this way. Therefore, a missing out-reach concept within the work of victim support services reduces their effectiveness.

If LEFÖ-IBF encounters criminal law cases of labour exploitation, they cooperate with the police. If they encounter labour and civil law cases of labour exploitation, LEFÖ-IBF tries to

get access to the Provincial Chambers of Labour (*Länderkammern*) and the trade union for its clients. Both support victims in lodging claims for outstanding salaries (see section 3.1.3).

## 5.2 Access to justice and other mechanisms to empower victims

The Provincial Chambers of Labour (*Länderarbeiterkammern*) support victims of labour exploitation in filing their civil claims, particularly back pay of denied wages and compensation of missing or lacking social security contributions. Many interviewees share the following opinion: as soon as the victim has access to the Chamber of Labour and therefore receives legal representation (in labour law matters), it works effectively. The Chambers of Labour have the opportunity to legally represent all victims of labour exploitation, regardless of whether their employment is registered or not. Regarding undocumented (irregular) work, e.g. the Styrian Chamber of Labour mostly denies legal representation because of lack of evidence for denied wages [L(1)]. Irregular work with cash payment is a great barrier in lodging claims for outstanding salaries, since it is nearly impossible to prove outstanding wage entitlements. A lawyer is quoted on this issue:

*A: Concerning labour law, for us it makes no difference whether or not one is registered [at the regional health insurance fund]. This may sound stupid, but regarding the provability it makes a difference indeed: it is impossible for me to prove, if one says, he has a salary agreement about 2000 net, but he is registered for marginal employment or even not at all registered and then I cannot enforce this [wage claims] [L(1)]*

*A: Arbeitsrechtlich macht's für uns im Prinzip was die Durchsetzbarkeit betrifft nicht so einen Unterschied ob jemand angemeldet ist oder nicht, so blöd das jetzt klingt es ist nur von der Beweisbarkeit her dann unmöglich das zu beweisen, nicht, weil wenn einer sagt er hat 2000 netto vereinbart und ist angemeldet geringfügig oder überhaupt nicht oder was weiß ich was dann kann ich das [Entgeltansprüche] nicht durchsetzen. [L(1)]*

Further examples for this problem to prove labour exploitation in cases of irregular work and cash payments are available regarding domestic work in diplomatic households and regarding agricultural work (as illustrated in two case studies). According to the Employer Sanction Directive, one has to assume an employment of at least three months if it is impossible to prove due to irregular employment. However, this is only valid if the case comes up through inspections and it is not sure if this would be applied when victims report the case on their own initiative. Therefore, effectiveness in access to justice firstly depends on the readiness of the victim to report and secondly on the body of evidence.

Twice a week, on specific office days (*Amtstage*), the Labour and Social Courts offer cost-free information and support for victims who want to claim compensation and back pay. The court staff counsels the victims about their entitlements and tells them if a claim or a proceeding would make sense for them [J(1)].

There is a three year limitation period for claiming compensation and back pay of denied wages. When filing a complaint, each person (migrant or Austrian citizen) is entitled to legal assistance, if he/she cannot afford a lawyer. The only prerequisite for legal assistance is that the exploitation happened in Austria or that the wages were denied by an Austrian company. Some interviewees, particularly members of professional groups L and J, criticize the duration of the procedures, since usually the clients need the money quickly.

Lawyers and judges in the field of civil law state that compensation is usually paid in case of a court decision. In cases of an employers' bankruptcy, open wages are paid by a bankruptcy fund. According to the Victims of Crime Act (*Verbrechensopfergesetz - VOG*<sup>34</sup>), victims of crime have a right to compensation from the state (social compensation) if the offender is not able to pay. However, this act is only valid for Austrian and EU citizens and not for third country nationals. According to one interviewed judge, this amounts to discrimination against third country nationals.

Another main barrier for exploited migrant workers to access the civil justice system as identified by the interviewees is lack of information about entitlements and legal claims. Particularly migrants do not know that they can receive support by the Chamber of Labour in asserting claims, since it is unknown among migrant workers. Thus, the main difficulty is to reach the victims and to enable them to submit a case to the court. This problem was also issued in the focus group discussion, e.g. by a member of a victim support service:

*I also think, that what it needs, and I would nationally do more, outreach initiatives, that really go up to the people and say: "This and that rights, that's the opportunity" and "What is the AK?", the abbreviation [for Chamber of Labour, Arbeiterkammer], that as an Austrian you somehow have internalised, but I don't know, if somehow others really are clear on what that is. I have a lot to do with German people, they still don't know, because it simply doesn't exist anywhere else. That should be brought closer [to the migrants]. [FG(S)]*

*Und ich glaube auch, dass das was es braucht und da würde es bundesweit mehr brauchen, so aufsuchende Initiativen, die wirklich auf die Leute zugehen und sagen: "Das und das Recht, das ist die Möglichkeit" und "Was ist AK?", das Kürzel was man als ÖsterreicherIn irgendwie internalisiert hat, aber ich weiß nicht, ob irgendwie ein anderer wirklich klar haben, was das ist. Ich habe jetzt viel mit deutschen Leuten zu tun, die haben -, die wissen es immer noch nicht, weil das gibt es einfach nicht irgendwo anders, das muss man näher bringen. [FG(S)]*

Most cases do not represent those severe forms of labour exploitation including violence etc. but situations where irregular migrants agree with an employer to work. If the employer finally does not pay, they cannot do anything because they have no legal status and they (and sometimes even their families in the countries of origin) depend on the salaries.

As a consequence, the affected migrants would rather search for another job before taking their case to a court. Victims of labour exploitation, particularly those with an irregular or without a residence permit in Austria, won't benefit from reporting, since they can be deported as a consequence. In this regard particularly, the focus group discussion participants emphasize the necessity to provide victims of labour exploitation with a quick new perspective in Austria. With this the focus group participants particularly refer to possibilities to earn money.

### **5.2.1 Civil claims in criminal proceedings and claims lodged by third parties**

Civil and criminal procedures encompass different things. While claims of the state (taxes, etc.) and penalties are criminal law issues, the enforcement of employees' entitlements falls under civil law. In the criminal proceedings the state is only interested in prosecution and not

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<sup>34</sup> Austria, Victims of Crime Act (*Bundesgesetz vom 9. Juli 1972 über die Gewährung von Hilfeleistungen an Opfer von Verbrechen, Verbrechensopfergesetz - VOG*), BGBl. Nr. 288/1972, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008273](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008273).

in compensation. A victim has to join criminal proceedings as a private party (*Privatbeteiligter*) in order to lodge a claim for damages [J(2)]. The victim can file civil claims independently from the criminal proceedings' outcome. Deadlines and limitation periods have to be respected. The interviewees mention that the compensation rates in criminal proceedings are much lower compared to civil law. Furthermore, the duration of the proceedings is long. Therefore, experts recommend victims not to claim compensation within a criminal procedure but rather to lodge a complaint at the civil court with the support of the Chamber of Labour [S(1)].

Therefore, although it is possible, the criminal justice system's dealing with civil law claims does not work effectively and in practice it very seldom occurs in connection with labour exploitation. According to some interviewees' professional experience, the affected persons would rather start a new life than claim compensation and payment of denied wages (as illustrated in one case study). According to an interviewed lawyer, who works at the Chamber of Labour, in practice it occurs more often that a civil proceeding is interrupted through a criminal proceeding: if an employee lodges a complaint against the employer at civil court, employers very often accuse them e.g. of stealing and file a report at the police. Then the Chamber of Labour's lawyers as representatives of the accused employees have to wait until a final decision is made in the criminal procedure [L(1)].

According to interviewed members of the trade union, complaints can be lodged through third parties; however, the third parties need the consent of the victim. The trade union's legal assistance and legal protection services also work this way. They can only act (e.g. in claiming compensation and back pay of denied wages for the victim), if they receive the victim's consent [W(2)]. In civil procedures, representation by a lawyer is not mandatory below an amount of €5,000. A person can only be represented by a lawyer, not by any other private person or organisation (except from the trade union or the Chamber of Labour). This information is provided by interviewed judges and lawyers [L(2); J(2)].

## **5.2.2 Mechanisms that would facilitate lodging of complaints**

The interviewees suggest some measures to facilitate the lodging of complaints by migrant victims of labour exploitation.

### **Informing victims about their rights and entitlements**

Since a lack of information about rights and entitlements and how to assert them is identified as a main barrier for migrant victims' access to justice, interviewees suggest measures in this regard. According to them, it is important that such information is offered for migrants in a language they can understand. Written announcements in offices are perceived as ineffective [S(2)]. However, the empowerment of victims is also needed, since the victims usually fear authorities in general and the police in particular.

### **More efficient interpretation services at the Chamber of Labour and the Court**

The interpretation services at the Chamber of Labour and the Courts are perceived as insufficient by several interviewed members of workers organisations and victim support services, but also by an interviewed prosecutor. At courts, particularly on consultation days offered by judges for persons who cannot afford a lawyer, the availability of interpreters is basically obligatory. Currently a judge can organise an interpreter if needed; however, this needs time and during this period, the employer might already have destroyed or altered evidence [W(1)].

### **Access to companies for the trade union**

Interviewed members of the trade union suggest measures which provide them with access to companies and to victims of labour exploitation. Currently victims have to turn to the trade

union on their own initiative. Even if trade union members know about or at least suspect labour exploitation in a certain company, they can do nothing if no victim/employee seeks their help and gives them consent for legal representation [W(1)].

### **Cost-free litigation services for victims of labour exploitation**

Currently litigation services are only available for victims of labour exploitation, who are also victims of human trafficking or violence; for victims of labour exploitation “only” no such measures are available. Victims of labour exploitation without violence and human trafficking can turn to the Chamber of Labour, but the Chamber of Labour refuses legal representation in cases of irregular work because of lack of evidence [L(1)].<sup>35</sup> Therefore, interviewees suggest offering legal assistance during the process or, more generally, psychosocial and legal assistance for victims of labour exploitation as it already exists for victims of violence: the victim has an adviser who supports him/her and a lawyer who represents him/her at court [S(2)].

### **More personnel with a migratory background at the police and the labour inspectorate**

Some interviewees suggest increasing the numbers of personnel in the monitoring bodies, who are trained to inform migrant workers about their rights in their mother tongues. Currently the labour inspectorate and the financial police do not inform victims of labour exploitation or migrant workers about their entitlements when they carry out inspections (apart from individually engaged inspectors/officers). In this regard, increasing the number of personnel with a migratory background at the police, the financial police and the labour inspectorate is suggested [J(2); S(1); M(3)].

### **Residence permits as a form of victims’ protection**

Unsecure residence status and/or missing employment permit prevent irregular working victims from fighting for their rights or even seeking help. Access to justice is in practice not available for irregular workers (without residence permit), e.g. asylum seekers. Because of their insecure status they do not dare to lodge a complaint or make use of other legal instruments. Therefore, in order to support victims in complaining about exploitation, experts argue for measures to regularise their situation. Particularly asylum seekers as victims of labour exploitation should be granted a residence permit (at least until the procedure is ended). This suggestion comes up in the interviews [L(1); P(1); E(1)] and in the focus group discussion. A member of the Chamber of Labour issued it for example:

*The residency law hereafter very often doesn't give these people a perspective, yes? And that, I think, is a massive problem and as long as you can't give them perspective, I think, it goes back, to what [the participating member of a victim support service] said: as long as that is the case, the people will also cooperate with the offenders, because they can give them perspective and [even] if they only get two Euros, per hour for some kind of job. [FG(L)]*

*Das Aufenthaltsrecht erlaubt in jeder Folge eigentlich meistens oder sehr oft nicht, diesen Menschen Perspektive zu geben, ja? Und das glaube ich ist ein Riesenproblem und solange man ihnen keine Perspektive geben kann, glaube ich, geht das wieder zurück, was die [Teilnehmerin einer*

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<sup>35</sup> Legal aid (*Verfahrenshilfe*) can be applied for at the civil courts for civil proceedings and is then granted or not by the courts: Austria, Civil procedure order (Zivilprozessordnung), RGBl. Nr. 113/1895 last amended by BGBl. I Nr. 137/2009 Available at:

[www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40114072/NOR40114072.pdf](http://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40114072/NOR40114072.pdf).

*Opferschutzeinrichtung] gesagt hat: solange werden die Personen auch den Täter kooperieren, weil die können ihnen eine Perspektive geben, ja? Und wenn sie nur zwei Euro, zwei, drei Euro pro Stunde für irgend so einen Job. [FG(L)]*

There was consensus among all focus group participants that residence permits for victims of labour exploitation in an irregular situation would be a good form of victim's protection and enable them to file a report at the police and to cooperate with monitoring bodies like the labour inspectorate and the financial police. Generally, excellent information about the consequences of lodging a complaint should be provided to all persons concerned.

## 6. Attitudes

Regarding the question whether interventions in labour exploitation serve the interests of migrant victims, the interviewees' assessments vary: some think this is absolutely the case, others think this is absolutely not the case, and still others differentiate their assessment either along individual workers versus the policy level or along severe and less severe forms of labour exploitation.

In total, 10 interviewees of different professional groups and the lawyer who participated in the focus group discussion clearly argue that interventions into labour exploitation serve the interests of migrant victims. Some focus group participants (professional groups S and P) mentioned positive examples in which interventions served the interests of victims. They explain their view by referring to the preventive impact of interventions. Interviewed members of the groups M and W mention that as soon as companies are aware that they are subjects of monitoring and intervention and as soon as labour inspectors are present in companies, employers will be much more reluctant in exploiting employees. Furthermore, interventions in one company get known in the whole economic sector and exploitative companies get known in the migrant workers' communities. Therefore, workers can avoid working in these companies. Through interventions (e.g. inspections) exploitative working conditions can be revealed. An interviewed member of professional group M (the only one who clearly agrees that interventions serve the interests of migrant workers) states that repeated visits in companies increase the trust of the migrant workers in the authorities which makes them more willing to talk about their working conditions:

*[...] obviously also un-announced controls are planned and executed and then you do every so often find employees on site and can talk to them but often it's very difficult from the side of the employee, because the trust isn't always a given, to the Austrian authorities or officials, let's put it like that (...) then it's difficult (...) if you have the opportunity to come to a company more often, then the trust becomes stronger (...) that's our experience.*  
[M(1)]

*[...] Es werden von uns natürlich auch unangekündigte Kontrollen geplant und durchgeführt und da trifft man dann hin und wieder Dienstnehmer vor Ort und kann [sich] mit denen unterhalten aber sehr oft ist halt das dann von Seiten der Dienstnehmer sehr schwierig, weil das Vertrauen nicht immer von Haus aus gegeben ist, in die österreichischen Behörden oder Amtsträger, sagen wir mal so (...) das ist dann schwierig (...) wenn man die Möglichkeit hat öfters in einen Betrieb zu kommen, dann wird das Vertrauen stärker (...) das ist unsere Erfahrung.* [M(1)]

Eight interviewees from different professional groups with a dominance of police officers believe that interventions into labour exploitation do not serve the interests of the migrant workers. Their main arguments are that the consequence of interventions is the workers' dismissal and that the majority of the exploited migrant workers perceive being jobless as worse than working under exploitative conditions. Particularly since the wage levels in Austria are generally higher than in their countries of origin, they do not perceive themselves as exploited. Additionally in the focus group discussion, deportation was mentioned by members of professional groups W and P as a negative consequence of interventions for illegally staying or irregular migrant workers. Furthermore, it was mentioned, particularly by interviewed members of the professional groups J, M and P, that interventions do not serve the interests of migrant victims, since they won't report anything in the course of inspections or raids anyway. This is because their confidence in the authorities and the police officers is low.



Particularly, interviewed judges and police officers mention that in the migrant workers' view authorities and the police are "the bad ones" rather than their employers.

The remaining interviewees differentiate their answers: most of them state that interventions do not serve the interests of individual workers (dismissal or deportation as a consequence of interventions), but they do serve the interests of migrant workers in general. They also refer to the uncomfortable climate for the offenders created by interventions; furthermore, they acknowledge that without interventions nothing will change and they mention the preventive function of interventions. Many of these interviewees believe that individual situations in which interventions harm certain migrant workers do not justify not intervening into situations of labour exploitation. One interviewee [M(1)] compares it with interventions into situations of violence: even if the victim might not cooperate with the police, interventions should be carried out, because otherwise nothing will change:

*[The migrant victims of labour exploitation can be seen as] the "satisfied defrauded" But I can say: Yes [interventions do serve the interests of migrant victims]. Because it's simply a fundamental decision of each society that it doesn't allow for exploitation, doesn't allow for slavery. [...] I mean, it also exists in other situations where people experience violence and accept it because they don't know it any other way. It is not questioned anymore: is it in their interest? It is actually only questioned here [regarding labour exploitation] and I see it absolutely similarly. And criminals profit from that and they are not allowed to benefit from that. [...] And yes, it's absolutely, yes, it's in their interest. Obviously: we need to, need to help them insofar, as that they can stay, that they are really compensated, that they receive their money and that they receive access to the labour market. [M(1)]*

*[Die Opfer von Arbeitsausbeutung können gesehen werden als] die glücklichen Betrogenen. Aber ich will sagen: Ja. [Interventionen sind den Interessen von migrantischen Opfern dienlich] Weil es einfach eine Grundsatzentscheidung ist einer jeden Gesellschaft, dass es Ausbeutung nicht zulässt, Sklaverei nicht zulässt. [...] Ich meine, das gibt's auch in anderen Situationen wo Menschen Gewalt erleben und das akzeptieren, weil sie's nicht anders kennen. Da wird das nicht mehr so hinterfragt: Ist das jetzt in ihrem Interesse? Das wird eigentlich nur hier [Arbeitsausbeutung] hinterfragt und das sehe ich absolut ähnlich. Und es profitieren Verbrecher davon und die dürfen nicht davon profitieren. [...] Und ja, es ist absolut, ja, es ist in ihrem Interesse. Natürlich: wir müssen, müssen dann ihnen auch wirklich insofern helfen, dass sie bleiben können, dass sie wirklich entschädigt werden, dass sie ihr Geld bekommen und dass sie zum Arbeitsmarkt Zugang erhalten. Das muss man natürlich alles absichern. [M(1)]*

As it becomes apparent in this quote, too, these interviewees mention that interventions alone can never be sufficient to serve the interests of the migrant victims of labour exploitation. It rather needs more supporting measures for victims, in particular after interventions.

## 6.1 Reasons for not coming forward

The interviewees of all professional groups most frequently mentioned the following three reasons why exploited migrants do not report: **lack of information** about their rights and Austrian standards of working and wage conditions and connected with that lack of information on where to find help; **language barriers** and a **fear of the police and other public**

**authorities** – the criminal justice system in general. This fear is often due to the victims' experiences with public authorities in their countries of origin. Additionally, the majority of migrant victims of labour exploitation do not know anything about the procedures and their consequences and they doubt that they will benefit from lodging a complaint. Rather the opposite is true in the migrants' view: they are sure that they will lose their job if they come forward. These reasons are valid for all categories of workers. Illegally staying migrants or asylum seekers who carry out irregular work additionally fear deportation.

Apart from these most frequently mentioned reasons some interviewees (particularly members of the professional group S) mention socio-psychological reasons, like shame, pressure due to stress in every-day life, a missing self-perception as being a victim of labour exploitation, a low self-esteem and the belief that nobody can help them.

With regard to severe forms of labour exploitation especially of third country nationals, some interviewees mention their affectedness by employers' threats: they fear that their families in their countries of origin will be injured if they come forward [S(1); P(1); J(1)]. Therefore, they are in a situation of strong dependency, particularly if they additionally have to support their families with their income gained in Austria [L(1)].

Some interviewees also mention structural barriers which particularly affect migrants without a secure residence and work permit. According to them the main reason for migrants not coming forward and seeking a way out of their exploitative working situation is the lack of victim support in Austria and the restricted access to the Austrian labour market for third country nationals.

In general, most of the migrant victims of labour exploitation would say: "I would rather accept these conditions instead of coming forward and losing my job and have nothing left to support my family." A member of a victim support service, who participated in the focus group, illustrates this problem:

*And particularly now, people, who – men who work in construction, women who work in agriculture, they only know authorities as monitoring agencies, that will take away their job. Regardless of how badly it is paid, but they take the job away from him. Because once they were here, the job is gone. And actually they have no gain from it [intervention], so they cooperate with the offender; that's completely clear. And that's a longer process, because all that is passed on is: firstly: "You don't have any rights anyway", secondly: "You will then be punished and then it will be dealt with". Because it doesn't matter, if the person is wearing a uniform – police, or turns up as the Financial Police or turns up as the labour inspectorate: it is dealt with as negative intervention, because the people don't know what they do, because they don't understand, because they don't speak the mutual language and because then the job will be gone. [FG(S)]*

*Und gerade jetzt Menschen, die - Männer die am Bau arbeiten, Frauen, die in der Landwirtschaft arbeiten, kennen Behörden nur als Kontrollorgane, die Ihnen den Job wegnehmen. Egal wie wenig das bezahlt ist, aber sie nehmen ihm den Job weg. Weil wenn sie da waren, ist der Job weg. Und wenn wir das nicht schaffen, dabei zu vermitteln -, es ist nicht ok, was sie da tun, ja? - und, und sie haben eigentlich nichts davon, weil dir ja im Endeffekt nichts übrig bleibt, von dem kooperieren sie mit den Tätern, ganz klar. Und das ist ein längerer Prozess, weil immer und überall nur vermittelt wird: erstens: "Du hast sowieso keine Rechte", zweitens: "Du wirst dann bestraft und dann wird's erledigt". Weil, ist ja egal, ob die Person jetzt in Uniform - Polizei - anhat, oder als Finanzpolizei auftaucht oder also da als*

*Arbeitsinspektorat auftaucht: Es wird erledigt als negative Intervention, weil die Personen ja nicht wissen, was sie tun, weil sie sie nicht verstehen, weil sie nicht die gemeinsame Sprache sprechen und weil dann der Job weg ist. [FG(S)]*

The difficulties of selecting the three most important factors when confronted by: not coming forward, seeking support or reporting to the police, challenged many interviewees. According to them, all given factors are relevant. However, two factors were chosen most frequently: “Victims fear retaliation from the side of offenders against them or against family members” and “Victims fear that if their situation became known to the authorities, they would have to leave the country”. The second most frequently chosen factors are: “Victims are not aware of their rights and of support available to them” and “Victims perceive being jobless as worse than working in exploitative conditions”. This selection pattern mirrors the information provided by the interviewees in the open question: The main reasons for not coming forward are connected with fear - either of the authorities (deportation) or of the offenders (retaliation), lacking information about rights and where to find help and being jobless is perceived as worse than working in exploitative conditions.

**Table 7: Most relevant factors that significantly account for the fact that not many migrant workers who have been exploited severely come forward seek support or report to the police**

	M	P	S	J	L	R	W	E	N	Total
Lack of effective monitoring of relevant areas of economy	1	1			na.	na.	1	n.a.		3
Lack of targeted support service provision available to victims	1									1
Victims are not aware of their rights and of support available to them	3	1	6				2		1	13
Victims fear retaliation from the side of offenders against them or against family members	2	4	6	2					1	15
Victims suffer from feelings of shame			2				1			3
Victims believe that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings	1	1	3	1			1			7
Victims believe that proceedings are too bureaucratic and costly	1		1				1			3
Victims fear that if their situation became known to the authorities, they would have to leave the country	3	5	2	3					1	14
Victims do not trust that the police in particular would treat them in a sympathetic manner										
Victims perceive being jobless as worse than working in exploitative conditions	3	2	3	3			1			12
Other-please specify										

Don't know		1								1
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## 6.2 Most important factors to migrant workers who are victims

According to the interviewees' selection the most important factor to migrant workers who are victims is "to be able to stay and to make a living in an EU country", the second most important factor is "to receive compensation and back pay from employers" and "to be in a position to economically support other family members". The factor "to be able to return home safely" was less frequently selected, namely twice. The labour law related factor "to receive compensation and back pay of denied wages" is particularly selected by the interviewed members of the M and L group, while it plays only a small role in the selection pattern of interviewed members of groups P and S. On the other hand, the criminal law related factor, namely "to be safe and protected against further victimization", was mostly selected by members of P and J group and not so much by members of the M group.

**Table 8: Three most important factors to migrant workers who are victims**

	M	P	S	J	L	R	W	E	N	Total
To be safe and to be protected against further victimisation	2	4	2	2	1	n.a.		n.a.	1	12
For their family to be safe		2	1	1					1	5
To be able to stay and to make a living in an EU country	5	3	5	1	2				1	17
To see that offenders are held accountable and that justice is done	1	1	2				2			6
To be respected and to see that their rights are taken seriously	2	1	3	1	1		1			9
To be in a position to economically support other family members	2	2	5	1	1		1			12
To receive compensation and back pay from employers	5	1	1	1	3		2			13
To be able to return home safely		1	1							2
Other (please specify)										0
Don't know			1	3	1					5

## 6.3 Effectiveness of measures in Austria and suggestions to improve

With one exception (professional group E) every interviewee believes that more could be done in Austria to combat labour exploitation of migrants. This assessment is not necessarily connected to the belief that the measures implemented in Austria so far do not work effectively: some interviewees [P(1); J(1); M(1)] believe that the Austrian measures work effectively; however, more could be done despite of it (enough is done only when labour exploitation does not exist anymore).

The suggestions to improve the Austrian way of addressing severe forms of labour exploitation can be summarised in the following areas: measures to make inspections more effective in the field of preventing and combating labour exploitation, measures to support third country nationals in access to justice, opening the labour market for third country nationals to make them less vulnerable to labour exploitation and measures to raise awareness on labour exploitation among the Austrian general public and public authorities in particular.

### 6.3.1 Increasing the effectiveness of inspections

Many interviewees provide suggestions to make monitoring labour exploitation effective. More personnel at labour inspectorate and financial police are mentioned in order to be able to carry out more visits. More examination would particularly be relevant in the following areas: temporary work agencies, suppliers of personnel leasing and sub-companies, mainly those located outside of but working in Austria. Regarding economic sectors, the interviewees call for more monitoring in construction, cleaning and agriculture and forestry.

However, increasing personnel and conducting more inspections only are not perceived to be sufficient to increase the effectiveness of monitoring activities by the interviewees and the focus group participants. It rather needs an additional focus of monitoring, since currently inspections are carried out along tax-related issues: labour exploitation leads to reduced amounts of wage taxes and social security contributions. Furthermore, it is connected with wage dumping which affects the wages of *Austrian workers* in the long run. The migrant victims' perspective is absolutely missing in the mandate of the labour inspectorate and the financial police so far. Thus, in combination with the above mentioned personnel increase, the labour inspectorate needs an explicit mandate to monitor labour exploitation respectively working conditions [M(2); J(1); S(1); FG].

Furthermore, interviewees of the professional groups M, W, E and P and the member of a victim support service who participated in the focus group discussion call for more cooperation among authorities, namely the labour inspectorate, the financial police and the Regional Health Insurance Fund. Cooperation and particularly personal contacts to these authorities would simplify reporting on labour exploitation [M(2); E(1)]. According to some (but not all) interviewed members of the labour inspectorate, the implementation of a checklist with indicators of labour exploitation would make reporting of suspected cases to the criminal police easier particularly if there was a good cooperation and personal contacts [M(2)]. One M group interviewee additionally suggests including the criminal police in inspections, particularly in inspections in the economic sectors construction and cleaning. Another suggestion by this M group interviewee to make monitoring more effective is to provide employees with identification cards so that the criminal police, the financial police and the labour inspectorate are able to identify their actual employers particularly in cases of sub-service contracts in the economic sector construction.

### 6.3.2 Third country nationals' access to the labour market and to justice

Currently, asylum seekers can only receive a special case work permit for seasonal work and third country nationals can only receive a work permit for one specific employer. Third country nationals have to prove an income in order to extend their settlement permission or – in the long run – if they apply for citizenship. Asylum seekers with very long proceedings need an income or at least an occupation to prevent them from being bored but they are not allowed to work. As a consequence, many third country nationals and asylum seekers are forced into irregular work or to work under exploitative conditions [L(1); P(1)]. A lawyer who participated in the focus group discussion shares this opinion and is quoted on this issue:

*Or where the [asylum] procedure takes a very long time, and for them it's about bridging this time, I will say it in inverted commas, also concerning the income, because so to say there is no legal access to an occupation. Or an occupation is taking place and actually an employer is responsible for the application of the employment permit. But you take it [illegal work] nonetheless, the person who is affected, they say: "But I will die here as a criminal". [FG(L)]*

*D: Oder wo das [Asyl] Verfahren sehr lange dauert, und es geht ihnen eben um eine Überbrückung dieser Zeit, sage ich jetzt unter Anführungszeichen, auch was das Einkommen betrifft, weil sozusagen es ist kein legaler Zugang zu einer Beschäftigung da, oder es findet doch Beschäftigung statt und eigentlich ist ein Arbeitgeber verantwortlich, die Beschäftigungsbewilligung zu beantragen. Aber trotzdem nimmt man's [illegale Arbeit] auch an. Der oder die Betroffene, die sagen: "Aber ich stirb da jetzt als Verbrecher". [FG(L)]*

If they cannot stand the situation anymore and want to come forward, they fear deportation because of breaching the law by engaging in irregular work. Therefore, since a main risk factor of labour exploitation of third country nationals and asylum seekers is their restricted access to the labour market, many interviewees suggest opening the labour market, particularly to asylum seekers [P(1); L(1)]. The interviewees argue for measures to strengthen and empower migrant workers in general and migrant victims of labour exploitation in particular. Such measures could be informing them about their rights and entitlements, about the existence and the services of the Chamber of Labour. The Chamber of Labour should extend its interpretation services, since support and information provided in the migrants' mother tongues is very important when it comes to winning their confidence. Information and support for migrants would also be a preventive measure regarding labour exploitation: migrants who are informed about their rights and entitlements are less prone to labour exploitation.

### 6.3.3 Awareness raising

Some interviewees believe that more could be done particularly regarding awareness raising among politicians. As already reported, labour exploitation of migrant workers is not treated from a victim's point of view, but rather from a tax-related point of view (financial police) or from an aliens' policing perspective (aliens' police). Two interviewed members of the labour inspectorate justify this with the assumption that elections are easier to win by supporting the current point of view than by supporting migrant victims of labour exploitation.

Furthermore, according to an interviewee, Austria is at a very early stage in the fight against labour exploitation, while greater awareness already exists regarding forced prostitution [P(1)]. Another interviewee from the J-group believes in this regard that nothing happens in monitoring labour exploitation in the economic sector of forestry and agriculture because of "certain interests". According to this interviewee, the Austrian agricultural economy has a well-

established lobby and its interest is that the situation remains how it is even if labour exploitation occurs here [J(1)].

### 6.3.4 Legislation

Regarding the legislation on labour exploitation and the sanctions of perpetrators the interviewees' assessments also differ within professional groups. While one lawyer believes that law enforcement regarding irregular work and the punishment of offenders work effectively, two other lawyers believe that this is not the case. They suggest more severe sanctions in the criminal justice area for exploitative employers. Regarding the sanctions in the civil justice area the assessments differ too: some interviewees believe that measures to combat social dumping work quite well, but others suggest more severe sanctions also in the field of labour law. According to them, labour exploitation should really be a cost risk for employers. A member of the financial police suggests a more comprehensive legislation at national and, above all, European level.

Two focus group participants (professional groups S and L) clearly suggest a changing perspective on migrant victims of labour exploitation, particularly those who work and/or stay illegally in Austria. Currently, the police mainly treat them as offenders, which means "blaming the victim". The responsibility for illegal work should be brought to the employer, according to the participating member of the victim support service. The participating lawyer suggests implementing an incentive for victims of labour exploitation to filing reports according to residency law. The interviewee could imagine remunerating a report with the provision of employment permit and witness protection.

However, all legal measures to improve the Austrian fight against labour exploitation would not be successful if consumption patterns in Western societies remain the same. As long as consumers pay extremely low prices for products (or select the cheapest products) and services in Austria, labour exploitation will persist. Therefore, awareness raising measures to combat wage dumping in Austria are suggested, e.g. by a member of the Chamber of Labour:

*We should try that undocumented work or cheap work, isn't, as hip anymore, if you want to say it like that, yes? Only for example, in the Scandinavian area it's not en vogue to engage in wage dumping [e.g. in hiring extremely cheap cleaners], socially it's not as easy as taken for granted or even wanted or maybe you can even brag with it? [...] But I think: ultimately a legally philosophic sentence: laws are typically adhered to, if people deem them as being good and not because sanctions are looming. [...] This is why we have these problems in the residency law area, because persons do not understand these laws and therefore do not perceive them as good. Most people cross the street at the green light, not because the punishment looms, but because they fundamentally find it useful. [FG(L)]*

*Man sollte versuchen, dass undokumentierte Arbeit oder billige Arbeit nicht mehr so hip ist, wenn man es einmal so sagt, ja? Nur zum Beispiel im skandinavischen Raum ist es nicht en vogue einfach hier irgendwie Lohndumping zu betreiben [z. B. sehr billige Putzfrauen zu haben] dass das einfach gesellschaftlich nicht, nicht so einfach selbstverständlich oder sogar gewollt ist oder sogar man kann noch prahlen damit? [...] Aber ich glaube: letzten Endes ein rechtsphilosophischer Satz: Gesetze werden typischerweise dann befolgt, wenn Menschen sie für gut halten und nicht weil Sanktionen drohen. [...] Deswegen haben wir die Probleme im aufenthaltsrechtlichen Bereich, weil die Betroffenen die Gesetze nicht verstehen und somit nicht für gut halten. Die meisten Menschen gehen bei*

*Grün über die Straßen, nicht, weil die Strafe trat, sondern das grundsätzlich für sinnvoll halten. [FG(L)]*

This view was supported by the other focus group participants.

### 6.3.5 Selection of given measures

**Table 9: Measures, which would mostly improve the way labour exploitation is addressed in Austria**

	M	P	S	J	L	R	W	E	N	Total
Improve legislation against labour exploitation and its implementation	2	3	1		1	1				8
Improve legislation to allow better access to justice and compensation	2	1	2							5
More effective monitoring of the situation of workers in the areas of economy particular prone to labour exploitation	3	3	1	1	3	3	3		1	18
Measures to ensure that all workers know their rights		1	2	1	2	2		1	1	10
Measures to ensure that all workers have access to labour unions			1				1			2
More effective coordination and cooperation between labour inspectorates, the police and other parts of administration as well as victim support organisations and the criminal justice system	2	1	1	3	2	1	1	1	1	13
Setting up of specialised police units to monitor and investigate labour exploitation		3	2	2		1				8
Regularising the situation of certain groups of migrant workers with an irregular status	1		4		1	2		1		9
Regularising the situation of migrant workers once they have become victims of severe labour exploitation	1		3							4
Measures addressing corruption in the administration										0
More training of police, labour inspectors and other authorities	1		3	2			1			7



Police and courts taking labour exploitation more seriously			1				1	1		3
Other: - Measures to win the confidence of victims of labour exploitation and preventive measures in the migrant's countries of origin (P)		1								1
Don't know	1	2	1					2		6

According to the suggestions provided by the interviewees themselves, the given measure *“More effective monitoring of the situation of workers in the areas of economy particular prone to labour exploitation”* was selected most frequently by the interviewees. The reasons given are: more effective monitoring could be a preventive measure, particularly in the economic sector agriculture and sub-contracting companies; monitoring should be carried out more quickly after a reported suspicion e.g. by the trade union [W(1)]. One interviewee [S(1)] mentions that as only a few victims seek help on their own initiative, victims are only accessible for the authorities through inspections. Another interviewee could imagine a setting-up of specialized police units to monitor labour exploitation. The second most frequently selected measure was *“More effective coordination and cooperation between labour inspectorates, the police and other parts of administration as well as victim support organisations and the criminal justice system”*. According to some interviewees, this belongs to the above discussed measure: a more effective coordination and cooperation between monitoring bodies would make monitoring more effective [E(1); W(1); FG].

However, one interviewee doubts if such measures would help to combat severe forms of labour exploitation. At the national level, some interviewees believe that cooperation and coordination is already realised through the working group labour exploitation, but it should be broadened in scope. Some interviewees suggest that a more effective cooperation and coordination should not only happen nationwide but rather EU-wide, since particularly EU-wide cooperation does not work so far [P(2)].

The third most frequently selected measure was *“Regularising the situation of certain groups of migrant workers with an irregular status”*. The interviewees particularly mention migrants' access to the labour market. A person who has a legal access to the labour market will not take an irregular job and take on the risk of being exploited and additionally punished by the Austrian criminal justice system. According to interviewees providing asylum seekers with access to the labour market would save administrative costs [M(1); P(1)]. Some interviewees and focus group participants additionally suggest supporting them better if they already have become victims of labour exploitation and not deporting them. Victims will not report labour exploitation if they risk deportation [S(2); P(1); FG].

The answer *“Measures to ensure that all workers know their rights”* was selected 10 times and concrete suggestions in this regard provided by some interviewees are: measures to check whether the migrant employee understands the working contracts he/she signs. The employer could confirm this understanding by signature. This is also supposed to be an important preventive measure [S(1)].

Various reasons are given for the selection of the measure *“Improve legislation against labour exploitation and its implementation”*. The Alien's Police Act mentions labour exploitation only in connection with illegally staying migrants and not with those, who are legally resident in Austria (e.g. asylum seekers). Furthermore, too little use of residence permit for special protection (*Aufenthaltsbewilligung §69a Besonderer Schutz*) is mentioned by one P group interviewee. Some interviewees mention that sanctions are too mild, particularly for less

severe forms of labour exploitation and there are no explicit criminal law provisions on forms of labour exploitation, which are not linked to human trafficking in the current Austrian legislation [P(1)]. Labour exploitation is not even clearly defined in the legal provisions, which leaves room for interpretation [P(1)]. Other interviewees believe that legislation is sufficient but not its implementation [L(1); M(1); J(1); E(1)]. When referring to insufficient implementation, these interviewees mainly mean a lack of effective monitoring and lack of competences in identifying victims at the police and the labour inspectorate. Although the sanctions are high enough, the risk for perpetrators to be prosecuted is low.

Reasons given for the selection of the measures “*More training of police, labour inspectors and other authorities*” and “*Setting up of specialised police units to monitor and investigate labour exploitation*” were the lack of awareness on labour exploitation and on the needs of migrant victims among these actors and a lack of knowledge in identifying victims of labour exploitation. The respective interviewees [J(1); S(2)] call for more training of police, labour inspectors and other authorities [J(1); S(1)]. In this regard training on intercultural sensitivity, too, is suggested for the police and the labour inspectors. Some interviewees believe that setting up specialised police units would increase the number of cases brought before court. Furthermore, a specialised police unit would deter offenders and therefore also be an important preventive measure [M(1)]. Other interviewees, partly belonging to the same professional groups as the persons mentioned above, who are in favour of setting-up specialized police units, argue against this measure, since labour exploitation is a cross-sectional issue [J(1); P(1)]. And still others mention that such specialized police units already exist, namely the financial police [E(1); P(1)].

“*Measures to ensure that all workers have access to labour unions*”; “*Police and courts taking labour exploitation more seriously*” and “*Measures addressing corruption in the administration*” have no or little importance according to the findings of the interviews.

The information given by one P group interviewee differs from those provided by the others. According to him/her, both monitoring and legislation to combat labour exploitation work effectively in Austria. Even if legislation and its implementation would be improved, victims of labour exploitation would not recognise it, particularly because they do not identify themselves as victims. He/she claimed that the financial police carried out 65,000 monitoring visits in 2012 but no single victim of labour exploitation was identified. The interviewee also states that the financial police are well trained regarding this issue and cooperation works well. This interviewee also participated in the focus group discussion and their assessment regarding controls/monitoring in private households provided there is quoted:

*So if I recall the past few years, now I have been active in this area for a relatively long time, I would say: a lot is happening in Austria. Not at least: we don't need to be shy about the international comparison. [...] I am happy that we have this system, because I reject total control just as much, as a police officer, yes? So we are talking about private areas. So that would be – I think – excessive, if some authority was given the power or the right to simply just inspect all private households at all times according to certain topics, yes? So I am happy, that we don't have that. That's why you also need to have a certain amount of courage regarding a gap. We need to begin somewhere else, yes? [FG(P)]*

*Also, wenn ich so die letzten Jahre Revue passieren lasse, jetzt bin ich doch schon relativ lange in dem Bereich tätig, würde ich sagen: es passiert sehr viel in Österreich. Nicht zuletzt: wo man den internationalen Vergleich nicht scheuen braucht. [...] Ich bin froh, dass wir dieses System haben, weil die totale Kontrolle ich genauso ablehne als Polizist, ja? Also wir reden da über private Bereiche. Also es würde - glaube ich - weit überschießen,*

*wenn jetzt irgendeiner Behörde geben würde, um alle Privathaushalte zu jeder Zeit zu gewissen Themen einfach nur zu inspizieren, ja? Also ich bin froh, dass wir das nicht haben. Deswegen muss man auch einen gewissen Mut zu einer Lücke haben. Wir müssen woanders ansetzen, ja? [FG(P)]*

This interviewee suggests measures to win the confidence of victims of labour exploitation and pre-departure programmes (information campaigns) in the migrants' countries of origin.

## 7. Conclusion and any other observations, including contentious issues from interviews/ focus groups

The findings of the fieldwork research indicate that labour exploitation in Austria mainly occurs in the economic sectors **agriculture and forestry**, in **private households** (elderly care and cleaning) and in **construction**. The common aspect of these occupations is that they are rather hidden forms of employment without contact with clients, customers or other persons. Workers in these sectors are rather isolated and hidden from the public. Generally, precarious employment and false self-employment are named as occupations with a high risk of labour exploitation affecting migrant workers.

The most frequent forms of labour exploitation encountered by the interviewed experts are under-payment for work, which ranges from payments below the collective agreements over **delayed payments** up to **missing payment** in severe forms of labour exploitation. Additionally it occurs in connection with labour exploitation that employers do not pay sufficient social security contributions or even register employees at the Regional Health Insurance Fund. As a consequence employees are not entitled to healthcare services without knowing about this fact (as illustrated in one case study). Such forms of labour exploitation are particularly encountered by members of professional groups M, W and P (financial police officers). It also occurs frequently that employers **keep migrant workers in dependency** through willful deception (e.g. promising the employees that they will receive their wages to keep them in employment, but never paying). Additionally, interviewed experts and focus group participants who belong to professional groups S and P state **bad treatment of employees** (devaluations, bad housing conditions, workers have no control over their working times, they either have to work up to 16 hours a day or to be available on call, etc., ).

According to the experts' experience (interviewees and focus group participants) the first issue that arises in the statements of exploited employees is that they receive no or too little wages. Therefore, the denied wages are often the initial point for victims to bring it to an end, to come forward and seek help. The named other aspects of labour exploitation come up only subsequently.

Regarding the question of **how labour exploitation is addressed in Austria**, the findings of the research clearly indicate that it is mainly indirectly addressed with regard to tax fraud, loss of social security contributions and wage dumping; thus, in its detrimental consequences for the Austrian Federal state and not for the migrant victims.

Victims can turn to **workers' representative services** where they receive cost-free counselling and legal support. The findings clearly indicate that these services work effectively for Austrian victims of labour exploitation within regular employment. Apart from single projects, workers' representative organisations do not offer specialised services for migrants. They also do not collect statistical data separately or disaggregated for migrants [L(1)]. As a consequence, migrant workers' access to services is restricted and language barriers play a major role. Even if migrant victims (in the best case) turn to the Chamber of Labour or the trade union, they will receive support in **labour law matters only**. The focus of workers' representative organisations lies on claiming for wage entitlements rather than revealing (not obvious) criminal aspects of the case, like threat, false promises, violence, isolation or other strategies to keep migrant workers in dependency (which would fall under § 116 Aliens Police Act, see section 2). A police officer who provided a case study mentions that the criminal police is very rarely contacted by workers' representative organisations that deal with labour exploitation. Consequently criminal aspects in these cases remain under the surface. Therefore, as many case studies show, although a civil procedure is initiated, no charges are brought against the perpetrators.

According to the Austrian legal definition, labour exploitation without the elements of human trafficking or violence is no criminal offense. Thus victims of labour exploitation, who are not trafficked or affected by violence, do not exist, legally speaking. This definition affects the provision of **victim support services**. There are no victim support services available for migrant victims of labour exploitation without human trafficking or violence. Almost all specialized victim support services for migrant workers affected by labour or sexual exploitation are located in urban areas, namely in Vienna (such as the “Drehscheibe” or “LEFÖ”). While some interviewed experts point out that victim support services should be implemented in rural areas and in Western Austria too, others do not see a need for it. The participating member of LEFÖ mentioned in the focus group discussion that their organisation, which is responsible for victims of exploitation nationwide, is not overrun by clients. But in the course of the discussion it turned out that more services available in different areas of Austria might create more demand among migrant workers, which indicates the need for more support services in different areas of Austria.

As the findings of the research show, one has to identify a gap in support services, which affects migrant victims of criminal forms of labour exploitation without human trafficking or violence. Victim support services are not available for them, since they are not perceived as victims and workers’ representative organisations are not accessible for them, since they generally do not offer specialized services for migrants and are not in charge of dealing with criminal aspects of labour exploitation. When it comes to **labour exploitation, including human trafficking**, the situation is different: here the Austrian institutions’ perspective focuses on supporting the victims and prosecuting the perpetrators. The Criminal Intelligence Service Austria (*Bundeskriminalamt*) on the federal level and its units at the Provincial Offices of Criminal Investigation (*Landeskriminalämter*), located in all Austrian provinces, cooperate with other national actors such as the financial police and victim support services, as well as with Interpol and Europol to investigate and prosecute human trafficking. Furthermore, a hotline on human trafficking is implemented nationwide to offer a low-threshold service to report suspicions. Victim support services are available free of charge for victims of human trafficking, be they EU citizens, third country nationals, asylum seekers or illegally staying. However, in practice, these institutions mainly focus on forced prostitution rather than labour exploitation in different economic sectors.

As there is no referral system implemented at the police regarding victims of **labour exploitation without human trafficking or violence**, the role of the police in supporting these victims has proven contentious through the interviews (see section 4.3.1). This issue was raised in the focus group discussion and a participating police officer confirmed the subordination of the issue labour exploitation at the police. The “average police officer” is not specialized in dealing with victims of labour exploitation. Police officers may inform victims of labour exploitation about the services of the Chamber of Labour (see section 3.1.5), but without probing or scrutinising whether there might be criminal aspects in this case. Therefore, the importance of training for police officers on labour exploitation affecting migrant workers is underlined. Offenses in connection with labour exploitation are very complex and the police needs to change their point of view: away from blaming the victim (for illegally staying or working) towards supporting victims of labour exploitation.

Even if the police is supportive, other barriers are identified for victims’ access to justice. The main barrier derives from the consequences of coming forward and seeking help: since there is comparably little dismissal protection implemented in Austria [W(1)], victims of labour exploitation who come forward and seek help very often lose their job. Particularly for migrant workers, who experienced poverty and unemployment in their countries of origin, exploitative working conditions in Austria are the lesser evil to being dismissed because of coming forward. For migrants with or without a restricted work and residence permit, dismissal is not the only consequence of coming forward, they also risk deportation. Therefore, the **incentives for migrant victims of labour exploitation to come forward and seek help are little**. Low

confidence in the Austrian public authorities, particularly the police, language barriers and a lack of information about the Austrian standards of work additionally prevent migrant victims from coming forward. Exploited migrant workers furthermore very often depend on their employers and are vulnerable to their threats; or they have the economic responsibility for their relatives in their countries of origin [J(1); L(1); P(1)].

Victims' **access to justice** is also an issue which has proven **contentious** among the interviewed professionals. While some of them (particularly lawyers and judges) mention that access to justice is given for victims of labour exploitation in Austria, others (particularly members of migrant centres, victim support services, monitoring bodies and workers representatives) mention barriers in accessing justice for migrant victims of labour exploitation. The focus group participants homogenously confirmed the barriers for victims of labour exploitation in accessing justice. A participating member of a victim support service refers to the Counselling Centre for Undocumented Workers (*Anlaufstelle für undokumentierte ArbeitnehmerInnen*). It is financed by the trade union and the Federal Ministry for Labour, Social Affairs and Consumer Protection and opened in March 2014. This counseling centre informs irregular migrant workers without residence and work permit about their rights. It also offers support in labour and social law affairs and legal assistance in the enforcement of claims against employers. Counselling is available free of cost and in different languages (e.g. Bosnian, Croatian, Serbian, English, French or Spanish, more languages are available on demand).<sup>36</sup>

Concrete suggestions to overcome barriers in accessing justice provided by members of professional group S (particularly by the S group participant in the focus group discussion) are outreach concepts. Currently outreach is mainly carried out in sex work, but not in the other economic sectors prone to labour exploitation, namely forestry and agriculture (seasonal work in harvesting) and domestic work. **Out-reach work** is not only important to identify victims and support them in access to justice, but also to inform migrant workers about their rights, in the sense of a preventive measure. Furthermore, through out-reach work migrant workers can be informed about workers' representative organisations such as the Chamber of Labour. Generally the findings of the research indicate the importance of low-threshold, multilingual and free of charge legal counselling services to inform and support migrant victims of labour exploitation in accessing justice.

Another problem identified through the fieldwork is that migrant **victims** of labour exploitation **are more "in solidarity" with exploitative employers than with the police** and other authorities. Reasons mentioned in this regard are the high dependency on employers on the one hand and a lack of trust in public authorities, particularly the police on the other. Since migrant workers' main need is money and they receive it from the offenders (the employers), even if not enough, they have a pecuniary interest in remaining in their situation. One focus group participant [FG(W)] named these people the "satisfied defrauded" (one M group interviewee also used this expression). At the same time, most migrant workers see authorities as only taking away their jobs and in fact – at least from their point of view – they do not benefit from cooperating with the authorities. In this regard, the focus group participants (particularly professional groups L and S) point out the importance of offering victims a new perspective to be realised on short-term. What they need most is a new employment or any kind of immediate income.

The focus group participants in particular argue for measures to get to the root of the problem of labour exploitation: **more severe sanctions** for labour exploitation to deter offenders and to make labour exploitation economically less attractive for them should be implemented. **Awareness raising** measures targeting the Austrian general public are suggested too.

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<sup>36</sup> See [www.undok.at/](http://www.undok.at/).

Awareness raising should change attitudes of being smart for paying less for goods and services, because it supports labour exploitation of mainly migrants.

Finally one has to state that the findings of the research clearly indicate that Austria dealing with labour exploitation only stands at its beginning. While there is more awareness and knowledge on human trafficking or exploitation in prostitution among law-enforcement authorities, the awareness on all other forms of labour exploitation, is insufficient. Currently labour exploitation is only a side-responsibility of public authorities and private institutions (e.g. migrants' centres or workers' representative organisations). Furthermore, these institutions are only in charge of certain specific forms of labour exploitation (e.g. either combating human trafficking only or offering legal support for victims in claiming labour law entitlements only). Therefore, some of the interviewed experts suggested mandating a public authority (or a specialized police unit) to the prevention and monitoring of labour exploitation. The implementation of the Counselling Centre for Undocumented Workers (*Anlaufstelle für undokumentierte ArbeitnehmerInnen*) is one step forward in this regard.